ALPHABETIZED BIBLIOGRAPHY ENTRIES

Adams, George W. "Advocacy in Mediation." The Advocates' Quarterly; October 2000; 23(1): pp. 471-477.
In this article, the author details the role of advocates in the mediation process in the Canadian Court System. The author highlights the differences between advocacy for the purpose of settlement and advocacy at trial, concluding that advocates in mediation must maintain a proper balance between their clients' interests and the interests of both parties in reaching a settlement.
{21} MED: RELATED PROCESSES-GENERAL
{138} ETHICS: GENERAL
{151} ROLE OF LAWYERS

Agros, Glencore V. "Arbitration: Legal Set-Off and Enforcing Admitted Claims." Lloyd's Maritime and Commercial Law Quarterly; May, 2000; (2): pp. 153-160.
The article discusses the availability of arbitration not only as a procedure for resolving a dispute, but also as a process for enforcing an admitted claim it. Presents the notion that if an arbitration clause is present, and a debt that would be arbitrable under the clause is admitted it, then the dispute is not over. Instead, a final arbitration award is necessary to end the dispute as this will keep the issue from being litigated. This position furthers the goal of arbitration of reducing trials by preventing further litigation.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Aldridge, Trevor. "Dot Geography." Solicitors Journal; December 2000; 144(45): pp. 1091.
There will undoubtedly be disputes over web retail transactions, but questions remain as to the proper location where the disputes will be resolved. The European Commission is considering a proposal that would allow disgruntled customers of dot-com companies to bring litigation in the claimant's own country rather than the website's country. Advocates argue that such a proposal would limit immunity of process, while opponents argue that this could unleash endless and uncertain litigation around the world. The author supports the proposal and suggests that those sites which do not follow this lead may lose business as e-traders will come to prefer sites which follow the proposal.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Alexander, Vincent C. "Special Proceedings Relating to Arbitration: New Developments." New York Law Journal; September 2000; 224(56): pp. 3.

An overview of recent changes in the laws governing judicial proceedings relating to arbitration is given. Discussed is a CPLR amendment that allows a party to obtain additional judicial relief with respect to an arbitration without commencing a new proceeding; the new venue rules for arbitration proceedings are also highlighted. Then, the article discusses changes in the statute of limitations and satisfaction of traditional equitable criteria because of recent court holdings.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Allgood, Davis B. "The Federal Alternative Dispute Resolution Act of 1998 and its Impact on Federal Court Practice in Louisiana." Louisiana Bar Journal; October 2000; 48(3): pp. 210.
In response to federal legislation requiring the district courts to employ an ADR program, Louisiana's eastern and western districts have reformed their ADR schemes to comply to the statute, while the state's middle district recently released a proposed system. Each of the districts' endeavors to comply with the Act are followed and explained.
{127} REQUIREMENTS: MANDATE TO USE
{133} COURT REFORM

Anderies, Shane. "Mandatory Arbitration Clauses in Individual Employment Contracts." University of San Francisco Law Review; Summer 2000; 34(4): pp. 765-797.
This note concentrates on *Armendariz v. Foundation Health Psychare Services, Inc.* It examines the arguments for and against the enforceability of mandatory arbitration clauses in individual employment contracts, focusing primarily on claims arising under Title VII and California's FEHA. The note concludes that courts should enforce such clauses.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Andersen, Steven K. "NAFTA: Mediation and the North American Free Trade Agreement." Dispute Resolution Journal; May, 2000; 55(2): pp. 56-64.
Steven Andersen explores the use of mediation to resolve trade conflicts that have arisen under NAFTA, and how policy-makers could help to encourage more mediation. Andersen writes that while mediation is a more efficient and effective method of resolving disputes that involve cultural, language, and political barriers than arbitration, NAFTA constituents must push for increased use of mediation in order for its use to become more common.
{92} SUBJ MATTER: INT'L

Anderson, Edward C. "The Multi-Door Courthouse Arbitration - The Open Door." The Hennepine Lawyer; April, 2000; 69(4): pp. 12-15.
Article discusses the benefits of contracting for arbitration to settle disputes. The article points out that some of the benefits of arbitration include less complex procedures, lower cost, and wide accessibility for all citizens.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Arking, Stanley S. "The Line Between Negotiation and Extortion." New York Law Journal; June, 2000; 223(110): pp. 3.
The article examines boundaries between aggressive negotiation and illegal extortion. Factors important to determining the appropriateness of strategy or behavior are as follows: whether the lawyer actually threatens a lawsuit, whether the threat is relevant to the potential lawsuit, negotiation demands compared to legitimate expectations, and the level of publicity threatened.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{94} SUBJ MATTER: LABOR—DISCRIMINATION
{123} SETTLEMENT: PRESSURE TO SETTLE
{147} POWER IMBALANCE
{138} ETHICS: GENERAL
{151} ROLE OF LAWYERS

Ash, Don R. "For the Children's Sake: How the New Parenting Plan will Work." Tennessee Bar Journal; September 2000; 36(9): pp. 12.
A new mediation program in Tennessee being used on a trial basis in six counties requires divorcing couple's to take classes on the effects of divorce on children. The couple comes to a "parenting plan agreement," outling exactly what rights and responsibilities each parent will have regarding the children. So long as there is no evidence of abuse the divorce is handled by a court-appointed mediator.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)
{133} COURT REFORM

Astor, Hilary. "Rethinking Neutrality: A Theory to Inform Practice -- Part II." Australasian Dispute Resolution Journal; August 2000; 11(3): pp. 145-154.
The author recognizes that in mediation there is a primary focus on the neutrality of the mediator. The author proposes that instead we should be concerned with maximizing party control in mediation. This approach will decrease personal scrutiny of the mediator, is responsive to power

imbalances, and is fluid and dynamic so it will change as the situation in the mediation changes.
{21} MED: RELATED PROCESSES-GENERAL
{149} QUALITY CONTROL
{147} POWER IMBALANCE

Baker, P. Jean. "Binding Arbitration: Federal v. Private." Dispute Resolution Journal; May, 2000; 55(2): pp. 19-22.
The article discusses the procedural differences in the application of consensual and compulsory binding arbitration agreements by the federal government. The discussion outlines contractual arbitration requirements in the federal public sector. It reveals that the rules governing binding arbitration are not only completely different from those in the private sector, but they also vary significantly across the three branches of the federal government.
{88} SUBJ MATTER: GOV'T CONTRACTS
{128} REQUIREMENTS: STATUTORY OR RULES

Baldwin, John. "Dispute Processes: ADR and the Primary Forms of Decision Making (Book Review)." Civil Justice Quarterly; April, 2000; 19: pp. 203-204.
This book review of Michael Palmer's and Simon Roberts' *Dispute Processes: ADR and the Primary Forms of Decision Making* discusses the way in which the collection of edited materials written by prominent ADR scholars, unravels the "inherent complexity" of alternative dispute resolution.

Bann, Steven P. "*Sandvikab AB v. Advent International Corp.*, No. 00-5063." New Jersey Law Journal; August, 2000; 161(7): pp. 60.
This case involves an international dispute between a Swedish manufacturer and an American equity investment company. The latter contends no agreement ever existed, but requests enforcement of the arbitration clause of the contract. The manufacturer contends that the validity of the arbitration clause depends on the validity of the contract itself. The court agreed, holding that the validity of the contract must first be addressed before the arbitration clause is considered. Also, the court held that the equity firm's concession to the arbitration clause only manifested an offer to be bound. The defendant's motion to compel the arbitration clause was denied.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Barliant, Claire. "Garry Kasparov case champions efficiency of online arbitration." New Jersey Law Journal; July 2000; 161(4): pp. 34.

Author discusses online arbitration procedures as an effective weapon against cybersquatters. The Internet Corporation for Assigned Names and Numbers, the board overseeing the internet, recently adopted the Uniform Dispute Resolution Policy. The policy requires domain name registrants to participate in online arbitration if a party files a claim alleging the domain name infringes on a trademark. The costs of filing a complaint, plus attorneys' fees, should be lower than a court battle.
{74} SUBJ MATTER: GENERAL
{136} ECONOMIC ADVANTAGES OF ADR

Barliant, Claire. "Rough Justice." American Lawyer; September 2000; 22(9): pp. 71.
Disputes over the ownership of internet domain names may now be settled entirely online. The complaint, answer, and decision are delivered electronically. There are four services providing arbitrators. Only the ownership of the name is resolved, no damages are awarded. The process is much shorter and cheaper than litigation.
{81} SUBJ MATTER: CORPORATE
{136} ECONOMIC ADVANTAGE OF ADR

Barliant, Claire. "And Now, Dispute Resolution Online." New Jersey Law Journal; July, 2000; 161(1): pp. 30.
The growing popularity of online transactions has created a market for online dispute resolution. Complaints received by the Federal Trade Commission generated from online auctions rose from 106 in 1997 to 10,700 in 1999. SquareTrade provides online dispute resolution to dissatisfied eBay buyers. A neutral party is particularly helpful online where hostilities tend to run higher due to the lack of direct contact. SquareTrade's fate will be determined when its pilot program ends and the company begins charging eBay customers for the service.
{21} MED: RELATED PROCESSES-GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Bastianelli III, Adrian L.; Lange, Lori Ann. "Litigating With the Federal Government." Construction Lawyer; October 2000; 20(4): pp. 24.
This article summarizes potential procedural problems which can be encountered when litigating with the federal government over construction contracts. The author discusses ADR in the Court of Federal Claims, specifically the Alternative Dispute Resolution Act, and the use of arbitration to resolve disputes between the contractor and the government.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{88} SUBJ MATTER: GOV'T CONTRACTS

Bastida, Elizabeth. "Negotiating Mining Agreements: Past, Present and Future Trends." Journal of Energy &Natural Resources Law; May, 2000; 18(2): pp. 218-19.
Reviewer gives a favorable impression of Barberis' analysis of the evolution of mining agreements between nations and transnational mining companies in the past twenty years. Book deemed by reviewer to have filled a gap in current mining law literature with its discussion of current and future trends on mining agreements.
{92} SUBJ MATTER: INT'L

Baugher, Peter V.; Austermiller, Steven M. "A New Way to Resolve International Business Disputes in Illinois." Illinois Bar Journal; October 2000; 88(10): pp. 582.
This Article addresses the importance of arbitration in international commerce in Illinois, and two new mechanisms for Illinois lawyers to efficiently resolve international business disputes. The recently enacted Illinois International Commercial Arbitration Act provides legal infrastructure, and the Chicago International Dispute Resolution Association provides procedural rules and an Illinois-based forum. The authors encourage attorneys to consider these mechanisms early when negotiating client transactions.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Baugher, Peter V.; Austermiller, Steven M. "A New Way to Resolve International Business Disputes in Illinois." Illinois Bar Journal; October 2000; 88(10): pp. 582.
This Article addresses the importance of arbitration in international commerce in Illinois, and two new mechanisms for Illinois lawyers to efficiently resolve international business disputes. The recently enacted Illinois International Commercial Arbitration Act provides legal infrastructure and the Chicago International Dispute Resolution Association provides procedural rules and an Illinois-based forum. The authors encourage attorneys to consider these mechanisms early when negotiating client transactions.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Beechey, John. "International Commercial Arbitration: A Process Under Review and Change." Dispute Resolution Journal; August 2000; 55(3): pp. 32-34.
This article was adapted from a speech presented by the author, John Beechey, at the American Arbitration Association's Board of Directors Reception and Annual Luncheon in April, 2000. This article discusses the changes that have been occurring internationally with regard to arbitration procedures and practices. There has been a great deal of development, such as new legislation and revision of rules on behalf of governments, arbitrator institutions, and arbitration practitioners, in the field of international dispute resolution.
{92} SUBJ MATTER: INT'L
{144} LEGISLATION

Belak, Tony. "Professional Responsibility and Mediation." The Federal Lawyer; September 2000; 47(8): pp. 18-19.
Lawyers should counsel their clients to opt for mediation for the cathartic effects. The value of the interactive dynamic of the resolution process is not so much the outcome as it is the emotional investment in getting there. Through mediation, all parties can achieve a sense of success, satisfaction, and fulfillment in an emotionally charged situation.
{21} MED: RELATED PROCESSES-GENERAL
{151} ROLE OF LAWYERS
{123} SETTLEMENT: PRESSURE TO SETTLE

Beller, Herbert N. "Suggestions for Morris Trust Regs 'Plan' Determination Rules." Tax Notes; April, 2000; 87(1): pp. 147-151.
The letter from the author discusses various aspects of the Morris Trust Regulation Plan Determination Rules, in particular, proposed regulation section 355(e) focusing principally on the "substantial negotiations" and "agreement, understanding or arrangement" (AUA) concepts of the proposed regulations. It refers to the application of these concepts in various contexts involving an acquisition of either the distributing (D) or controlled (C) corporation after a qualifying section 355 distribution.
{104} SUBJ MATTER: REGULATORY
{81} SUBJ MATTER: CORPORATE

Berecz, Deborah L. "Family Mediation: A Horse of Many Colors." Michigan Bar Journal; May, 2000; 79(5): pp. 494-501.
Beginning with explaining Michigan's system of using different names for dispute resolution procedures than those used in other states, the author

analyzes the multi-dimensional role played by family mediation in Michigan Courts. The article highlights facilitative mediation, as well as the advantages and disadvantages of "Early Mediation" and "Late Stage Mediation," all within the context of family law.
{21} MED: RELATED PROCESSES-GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)
{136} ECONOMIC ADVANTAGES OF ADR

Berkman, Harvey. "High Court to Take on Three Arbitration Cases Next Term." New York Law Journal; June, 2000; 223(115): pp. 5.
This article discusses three upcoming United States Supreme Court cases important to arbitration law. The cases involve the costs and fees of mandatory arbitration, when a court may order vacatur of an arbitrator's decision, and whether nonunion workers are subject to federal arbitration law.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{81} SUBJ MATTER: CORPORATE
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{93} SUBJ MATTER: LABOR—GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{96} SUBJ MATTER: EMPLOYMENT (NON-UNIONS)

Bernstein, David H; Rabiner, Sheri L. "Litigating by E-Mail with "UDRP": Lessons from New Dispute Resolution Procedure for Domain Name Disputes." New York Law Journal; August, 2000; 224(35): pp. S3.
Article examines the "Uniform Dispute Resolution Policy" (UDRP) instituted by the Internet Corporation for Assigned Names and Numbers. It allows, using an Alternative Dispute Resolution Procedure, an aggrieved trademark owner to challenge a third party's registration of a domain name that incorporates, or is confusingly similar, to its trademark. Article discusses the advantages of the UDRP, as well as possible solutions to problems with its application.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Bertrand, Jean L. "Thinking Outside the Box: Using ADR as a Settlement Component." San Francisco Attorney; October 2000; 26(5): pp. 28.
Article focuses on how ADR can be utilized as a component to achieve settlements, not as it is commonly used (as a means of facilitating settlements). Outlined are five actual methods that incorporate this technique, each with their own goal.
{123} SETTLEMENT: PRESSURE TO SETTLE

Bick, Jonathan. "Trespass Theory Poses Threat to Internet." New York Law Journal; August, 2000; 224(35): pp. S7.
Article examines a recent federal court ruling, *Ticket Master Corp. v. Tickets.com, Inc.*, that applied the legal theory of trespass to Internet communications, suggesting that such a use of trespass, if broadly applied, could materially reduce the existing value of the Internet. The article concludes that, generally, a private actor's attempts to curtail speech are not subject to constitutional challenge.
{74} SUBJ MATTER: GENERAL

Blaisure, Karen R.; Geasler, Margie J. "The Divorce Education Intervention Model." Family and Conciliation Courts Review; October 2000; 38(4): pp. 501-513.
This article provides a divorce education intervention model that court systems can use to gauge the level of programming that fits their goals for divorce education with consideration given to their available funding for such programs. Discusses three levels of divorce education, and compares eight different potential program components.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)
{155} TEACHING
{134} DISPUTE PREVENTION

Bland, Paul F. Jr. "To Fight Arbitration Abuse, the Devil is in the Details." Trial; July, 2000; 36(7): pp. 31-34.
To preserve a client's constitutional right to a trial by jury, an attorney must make specific arguments to establish either that the client did not consent to arbitration or that the clause was unfair. Since a constitutional right is at stake, an attorney should argue that consent may be established only when an individual voluntarily, knowingly, and intelligently agreed to arbitration. When attacking the fariness of the arbitration clause, the attorney should focus on how the clause is substantively unconscionable, rather than procedurally unconscionable.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{77} SUBJ MATTER: CIVIL RIGHTS

Bland, Timothy S. "EEOC Brings Mediation to the Table: Is It Right for Your Client?." The Federal Lawyer; July, 2000; 47(6): pp. 44-45.
Since the middle of 1999, the EEOC has been promoting its mediation program. The program seeks to use mediation to resolve disputes based on violations of the federal employment discrimination laws. The EEOC

considers various factors to determine participants eligibility including the following: the nature of the charge, the relationship of the parties, the size and complexity of the case, and the type of relief sought by the employee filing the charge. Among the benefits of the program, compared to traditional ligitation, are the quick resolution of the the charge, the greater privacy afforded to parties using mediation, and the reduced costs using the mediation program. However, unsuccessful mediations may result in increased length of time before the dispute is resolved, the cost of handling the charge may increase, and mediation may result in companies paying higher settlement amounts. A weighing of these costs and benefits is necessary to determine whether clients bringing a charge with the EEOC should use the mediation program.
{96} SUBJ MATTER: EMPLOYMENT (NON-UNIONS)

Block, Kenneth M.; Steiner, Jeffery B. "Arbitration Clauses; Limitations Must Be Placed on the Power of the Arbitrator." New York Law Journal; January 2001; 225(11): pp. 5.
Article argues that under New York Law, an arbitrator is not limited to rules of evidence or principles of substantive law unless the arbitration clause expressly so provides. The author also points out the fact that the courts are reluctant to step in and vacate an arbitrator's award where the two parties contractually agreed to use an arbitrator and did not limit his or her authority. The author concludes that in order to ensure that the arbitrator applies the provisions of the contract, strict limiting language should be included in the arbitration clause.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Blomquist, Robert F. "Some (Mostly) Theoretical and (Very Brief) Pragmatic Observations on Environmental Alternative Dispute Resolution in America." Valparaiso University Law Review; Spring 2000; 34(2): pp. 343-366.
This article provides an overview of the theoretical underpinnings of environmental ADR and proceeds to discuss whether, practically speaking, environmental ADR is working. The author identifies several aspects of environmental ADR that are in need of further exploration and analysis in order to determine how the process will work in the future.
{84} SUBJ MATTER: ENVIRONMENT

Blomquist, Robert F. "Is Environmental Alternative Dispute Resolution Working in America?." Environmental Law Reporter; August 2000; 30(8): pp. 10661-10668.
The author, chair and moderator, gives a summary and commentary on the first annual Valparaiso University College of Law Center on Dispute Resolution conference held in October 1999. The conference aimed to answer the question of this article's title, and Blomquist relates the resulting concerns in five areas such as ethical soundness and political legitmacy, in addition to conveying how attendees tackled five current pragmatic issues in the area of EDR.
{84} SUBJ MATTER: ENVIRONMENT
{102} SUBJ MATTER: PUBLIC POLICY
{138} ETHICS: GENERAL

Blunt, Steve. "Right to Accompaniment." Solicitors Journal; April, 2000; 144(14): pp. 342-343.
Employment Relations Act of 1999 allows a worker to be accompanied to a grievance or disciplinary hearing by a co-worker or trade union representative. The right extends to workers, not just employees. Workers include contractors, apprentices, and agency and home workers. The worker must request accompaniment, and refusal may be remedied by a penalty of up to two weeks pay.
{93} SUBJ MATTER: LABOR—GENERAL

Borg, Marian J. "Expressing Conflict, Neutralizing Blame, and Making Concessions in Small-Claims Mediation." Law and Policy; April, 2000; 22(2): pp. 115-141.
This article suggests that the way in which small-claims mediation participants express their conflicts, particularly how they handle the issue of blame, affects their willingness to engage in concession-making and to negotiate a settlement to their claims. This study found that participants who were able to neutralize the stigma of blame by either justifications or excuse-making were much more willing to engage in concession-making and expediently resolve their conflict.
{21} MED: RELATED PROCESSES-GENERAL

Bristow Q.C., David I.; Parke, Jesmond. "The Gathering Storm of Mediator & Arbitrator Liability." Dispute Resolution Journal; August 2000; 55(3): pp. 14-23.
The Canadian courts have traditionally protected arbitrators and mediators from liability for their conduct during the arbitration and mediation.

However, there has been movement in the United States with regard to claims being made against arbitrators and mediators, and this could also become the case in Canada. This article explores the potential claims that may be made against mediators and arbitrators in Canada and recommends steps arbitrators and mediators may take to protect themselves from liability.
{21} MED: RELATED PROCESSES-GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{99} SUBJ MATTER: OTHER PROF MALPRACTICE

Brooker, Benny; Lavers, Anthony. "Appropriate ADR - Identifying Features of Construction Disputes which Affect Their Suitability for Submission to ADR." The International Construction Law Review; April, 2000; 17(2): pp. 276-299.
This article examines findings from studies on the use of ADR in the U.S. construction industry that will help determine the appropriateness or suitability of ADR in the United Kingdom construction industry. The article identifies factors such as judicial support and enforcement of ADR agreements between parties, contractor's attitudes toward using ADR, the appropriateness of ADR procedures for specific types of disputes, and the financial size of the dispute as significant features that can determine the suitability of ADR procedures.
{80} SUBJ MATTER: CONSTRUCTION
{92} SUBJ MATTER: INT'L

Brooker, Penny; Lavers, Anthony. "Issues in the Development of ADR for Commercial and Construction Disputes." Civil Justice Quarterly; October 2000; 19(not used on journal): pp. 353-370.
This was requested via interlibrary loan, only available in United Kingdom

Brown, Jennifer Gerarda. "Ethics in Environmental ADR: an Overview of Issues and Some Overreaching Questions." Valparaiso University Law Review; Spring 2000; 34(2): pp. 403-421.
The author looks at the special nature of environmental ADR, and particularly the presence of potential bias of the players -- lawyers and mediators. The absence of parties, both present and future from the process, poses special ethical considerations. This article looks at legal ethics generally, and then how those rules and guidelines protect or fail to protect the interests of the various players, including both the participating and absent parties.
{84} SUBJ MATTER: ENVIRONMENT
{138} ETHICS: GENERAL

Bruce, Charles M. "The WTO's FSC Ruling: Let's All Relax." Tax Notes; March, 2000; 86(14): pp. 1927-1932.
The article details the consequences and alternative approaches of dealing with a World Trade Organization appellate ruling which upheld an October 1999 WTO dispute panel's report finding that the foreign sales corporation provisions in U.S. tax law are illegal subsidies.
{108} SUBJ MATTER: TAX
{92} SUBJ MATTER: INT'L

Buckner, Fillmore. "A Physician's Perspective on Mediation Arbitration Clauses in Physician-Patient Contracts." Capital University Law Review; Spring 2000; 28(2): pp. 307-320.
In offering a physician's perspective on mediating medical malpractice cases, Buckner discusses the sense of utter devistation that a medical practitioner feels when faced with a medical malpractice charge. Buckner notes that the physician's primary goal of total vindication is often a big obstacle to successful mediation in such cases. Addressing the value in mediating medical malpractice claims and discussing cases that have upheld or invalidated arbitration contracts, Buckner offers practical advice to physicians on how to create enforceable arbitration agreements with patients.
{98} SUBJ MATTER: MEDICAL MALPRACTICE

Bunni, Nael G.,. "Recent Developments in Construction Disputology." Journal of International Arbitration; August 2000; 17(4): pp. 105-15.
Article examines the recent developments for arbitration under the International Federation of Consulting Engineers (FIDIC). The author is concerned primarily with the procedures for resolving disputes under the Dispute Adjudication Board (DAB) with regard to the procedures for referral and the authority of the DAB. The article concludes with a discussion of disputes settlement under the FIDIC forms.
{92} SUBJ MATTER: INT'L
{80} SUBJ MATTER: CONSTRUCTION

Burden, William J.; Wright, Michele A. "Arbitration Clauses--Can a Shareholder Lose the Right to Seek Relief Under the Oppression Remedy?: *Armstrong v. Northern Eyes Inc.*" The Advocates' Quarterly; October 2000; 23(4): pp. 478-494.
This case comment analyzes the Court's decision in *Armstrong v. Norther Eyes Inc.* (unreported, June 15, 1999), Court File No. 98-CL-3246), rev'd 96 A.C.W.S. (3d) 919 (Div. Ct.). The Authors argue that a broad arbitration

clause cannot deprive shareholders of their right to recover pursuant to section 248 of the Ontario Business Corporations Act. Therefore, shareholders cannot be deprived of the "oppression" remedy, absent specific language in the shareholders' agreement, waiving the right to such recovery.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{106} SUBJ MATTER:SECURITIES

Burke, Jean E.; Boyle, Patrick J. "Most Successful Mediators Are Masters Of Negotiation." New York Law Journal; May, 2000; 223(103): pp. 9.
For a mediator to be successful, it takes many of the same skills required to be a successful trial attorney, but negotiation skills are particularly important. In choosing a good mediator, the candidate should be trained and experienced in the process of mediation, could have technical knowledge of the subject in dispute, should have a presence that commands respect, and should be optimistic.
{21} MED: RELATED PROCESSES-GENERAL

Burrows, David. "Legal Aid and the Family Lawyer." Family Law; November 2000; 30: pp. 834-840.
This introduction to certain aspects of new public funding scheme for legal aid is for the family lawyer in the United Kingdom. The Access to Justice Act 1999 replaced the old legal aid scheme with the new public funding scheme which puts more power to the Lord Chancellor. Availability of funding, family disputes and the new scheme, funding code criteria, and various family law proceedings are discussed.
{21} MED: RELATED PROCESSES-GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)
{92} SUBJ MATTER: INT'L

Burrows, David. "Mediation - the King's New Clothes." Family Law; May, 2000; 30(5): pp. 363.
English Solicitor Advocate, David Burrows, argues that mediation does have a role in children proceedings and possibly one in ancilliary relief proceedings as well. He criticizes, however, the previous British administration's making of mediation in such disputes mandatory, and characterizes the weaknesses of such policy.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)

Busch, Jeffrey S.; Hantusch, Nicole. "I Don't Trust You, But Why Don't You Trust Me? Recognizing the Fragility of Trust and Its Importance in the

Partnering Process." Dispute Resolution Journal; August 2000; 55(3): pp. 56-65.
In this article, the authors explore the importance of trust in ensuring a successful partnering process within construction projects. Lack of trust between the parties can prevent a successful project and if the parties strive to establish trust, negotiations concerning the contract will be fairer. The authors explore the main obstacles to building trust and provide an action plan that will help build and maintain a relationship of trust in organizations and construction projects.
{80} SUBJ MATTER: CONSTRUCTION

Bussin, Naomi. "Evaluating ADR Programs: The Ends Determine the Means." The Advocate's Quarterly; April, 2000; 22(4): pp. 460-499.
This article examines the necessity to evaluate alternative dispute resolution systems and the principles that may be used in evaluating these systems, particularly with regard to the quality of the program and complishment of its goals. This article also provides general criteria that may be used in evaluation of ADR systems, such as efficiency, cost, user satisfaction, fairness and justice, and compliance.
{149} QUALITY CONTROL

Butler, Fred D. "When Should Race, Culture, or Gender Be a Factor When Considering a Mediator?." San Francisco Attorney; October 2000; 26(5): pp. 33.
This article addresses the treatment of race, culture, or gender of a mediator. It furthers the position that lawyers who increasingly desire that mediators have subject matter expertise, will likely benefit from mediators who better understand the cultural and racial nuances that may exist between parties. The article also argues that mediators need to have a greater awareness of the dynamics involving race, culture, and gender of disputants and opposing counsel.
{124} COMPARISONS: CROSS-CULTURAL
{151} ROLE OF LAWYERS

Butler, Monika; Hauser, Heinz. "The WTO Dispute Settlement System: A First Assessment from an Economic Perspective." The Journal of Law, Economics, & Organization; October 2000; 16(2): pp. 503-533.
This article looks at trade litigation between countries using the WTO's new Dispute Settlement System, and concludes that it is more effective than the General Agreement on Tariffs and Trade (GATT). After detailing the settlement system, the authors conclude that the WTO system will not

discourage new trade restrictions, that the losing country usually appeals the panel's decision, and that bilateral settlements are more likely to occur early on in litigation.
{92} SUBJ MATTER: INT'L
{134} DISPUTE PREVENTION

Byrne, Justin. "NAFTA Dispute Resolution; Implementing True Rate-based Diplomacy Through Direct Access." Texas International Law Journal; Summer 2000; 35(3): pp. 415-434.
The author notes a failure to provide direct access to private entities for NAFTA Chapter Twenty disputes. The diplomacy practiced at present decreases the predictability and equitable quality of international agreements. Direct access, as is seen in NAFTA Chapter Eleven, ensures these features and provides greater economic integration and a reduction of the burden on governments. Thus, it creates a resolution of disputes arising out of Chapter Twenty. The author discusses power-based diplomacy and rule-based diplomacy. He favors rule-based diplomacy for its predictability, equity, and direct access.
{92} SUBJ MATTER: INT'L
{87} SUBJ MATTER: GOV'T
{134} DISPUTE PREVENTION

Caher, John. "Law Requires Negotiation of Police Back-to-Work Rules." New York Law Journal; May, 2000; 223(90): pp. 1.
In *Watertown v. State of New York Public Employment Relations Board*, a divided court held that negotation proceedings are manadatory in cases where the review of a disabled police officer's eligibility benefits are at issue.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Caher, John. "City Probe Bars ADR of Firefighter Fraud; 5-1 Majority Cites "Public Interest" in Corruption." New York Law Journal; October 2000; 224(75): pp. 1.
A New York City Appellate Court denied the City's Uniformed Fire Officers Association an opportunity to arbitrate with the Department of Investigations over an alleged workers' rights violation concerning the investigation of a pension fraud dispute. The court held that it would violate public policy to allow the arbitration. One dissenting judge said arbitration should be used where the possibility of an acceptable remedy exists.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Caher, John. "Time Seeking Arbitration Not Counted in Appeal." New York Law Journal; June, 2000; 223(116): pp. 1.
The New York Court of Appeals recently held that a plaintiff does not need to demonstrate that a demand for arbitration is brought under color of right in order to toll the Statute of Limitations. The Court also held that the Statute of Limitations in arbitration demand cases do not run until a plaintiff's appeals are exhausted. Contrary holdings would discourage plaintiffs from pursuing arbitration.
{133} COURT REFORM
{136} ECONOMIC ADVANTAGES OF ADR
{80} SUBJ MATTER: CONSTRUCTION
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Campell, R. Douglas. "Alternative Dispute Resolution: "Waiver of Trial" Clause Mandating Arbitration of Securities Disputes Should Require the Application of State Law." St. Mary's Law Journal; Summer 2000; 4(31): pp. 1039-1077.
When investors file claims against their trading firm, many find that they have waived their right to a trial by signing an arbitration agreement when they opened their account. The author compares and discusses the Texas state and federal acts that apply to arbitration and those that apply to security disputes, and analyzes how courts have applied those laws in security dispute cases alleging fraud. The author identifies the problems faced by investors in arbitrating security disputes under the current system. Finally, the author concludes that federal law should require arbitration agreements to include a choice-of-law provision, allowing investors to choose which law will govern the dispute, providing them greater protection.
{106} SUBJ MATTER:SECURITIES

Catanzariti, Joe. "Employment Negotiations Can Give Rise to False and Misleading Conduct." Law Society Journal (Australia); July, 2000; 38(6): pp. 38-39.
Under section 52 of the Austalian Trade Practices Act of 1974, corporations when conducting trade or commerce may not engage in misleading or deceptive conduct that is likely to mislead or deceive. The Australian High Court has waivered on whether employment negotiations meet the "while conducting trade or commerce" requirement of section 52. Recently, the High Court has moved to a broad view of section 52 finding that employment negotiations constitute trade or commerce. The application of section 52 in employment negotiations means that when negotiating, the parties must

adhere to all of the promises or statements made during negotiations or risk violation of the Act.
{96} SUBJ MATTER: EMPLOYMENT (NON-UNIONS)

Chapman, Anna. "Discrimination Complaint -- handling in NSW: The Paradox of Informal Dispute Resolution." Sydney Law Review; September 2000; 22(3): pp. 321-350.
The author explores complaint-handling processes in the New South Wales discrimination jurisdiction. The article asserts that although the rhetoric of ADR advocates 'investigation' and 'conciliation,' the process actual has many attributes of a Western adversarial process and at least have a subliminal effect in the mediation process in the attention to procedural fairness and seeing the parties as equal in power in bringing the issue to a close. The Anti-Discrmination Board shows systems of "creeping legalism."
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL
{77} SUBJ MATTER: CIVIL RIGHTS

Chenoweth, P. R. "*Jackson Township Board of Education v. Jackson Education Association*, A-3477-98T2." New Jersey Law Journal; August, 2000; 161(7): pp. 84.
This case concerns an agreement to arbitrate. The plaintiff, Board of Education, appealed a judgment declaring a grievance filed by the Jackson Education Association on behalf of a teacher. The court affirmed the decision, citing the rule that where parties have previously agreed to arbitration, the fact that the proceeding is pending before the Commissioner does not bar arbitration from proceeding.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Chenoweth, P.R. "N.J. Superior Court, Appellate Division Insurance Law -- Alcoholic Beverages --Arbitration -- Jurisdiction -- PIP -- Reimbursement." New Jersey Law Journal; January 2001; 163(1): pp. 74.
Article discusses the recent New Jersey Superior Court decision of *AAA Mid-Atlantic Insurance of New Jersey v. Prudential Property & Casualty Insurance Company*. The digest explains how the court held that it does have jurisdiction to decide a dispute between AAA and Prudential, even though the two companies were members of an intercompany arbitration through Arbitration Forums. Court further held that the two companies were not contractually bound to resolve all disputes through arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{81} SUBJ MATTER: CORPORATE

Cheung, Sai-On. "The Relational Dimension of the PRC Contract Dispute Resolution Regime." Australasian Dispute Resolution Journal; August 2000; 11(3): pp. 187-195.
Article discusses the integration of the People's Republic of China (PRC) into the world economic system by exploring five dimensions of the PRC contract law system. Author recognizes that relationship preservation in a contractual setting is given high priority in the PRC. Author suggests that foreign investors understand that relational contracts are the norm in the PRC and that gap-filling through adjustment of the contract terms is a necessity.
{92} SUBJ MATTER: INT'L

Chionopoulos, Michael E. "Preliminary Injunction Through Arbitration: The Fanchisor's Weapon of Choice in Trademark Disputes." Franchise Law Journal; Summer 2000; 20(1): pp. 15.
The typical franchise contract contains an arbitration clause that requires arbitration by AAA Rules. Rule 36, combined with Rules O-1 and O-3, allow a party to seek a preliminary injunction for the "protection and conservation of property and disposition of perishable goods." The author discusses four factors that make an injunction proper. The use of this provision when a franchisee withholds royalties from a franchisor is the focus of the article.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Choo, Robert. "Judicial Review of Negotiated Rulemaking: Should Chevron Deference Apply?." Rutgers Law Review; Summer 2000; 52(4): pp. 1069-1120.
The author argues that negotiated rulemaking undermines both agency expertise and the public interest prongs of Chevron. He concludes that rules made by negotiated rulemaking should get no judicial deference under Chevron, but should be reviewed non-deferentially to make sure that Congressional intent was served.
{104} SUBJ MATTER: REGULATORY
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{21} MED: RELATED PROCESSES-GENERAL

Christianson, Robbin. "After the Merger: Negotiating IT Integration." Public Utilities Fortnightly; July, 2000; 138(14): pp. S44.
Integrating information technology systems after a merger of two utilities is a difficult, costly, and tedious chore. As a result, business executives are

learning that projected savings can hinge on negotiating information technology integration before the deal is made.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{81} SUBJ MATTER: CORPORATE

Cohen, Lynne. "Inside the Beis Din." Canadian Lawyer; May, 2000; 24(5): pp. 27-34.
The Beis Din is a traditional Jewish Court consisting of three Orthodox Rabbis. Decisions reached are legally enforceable as parties enter binding contracts to abide by decisions. Parties each pick a judge, with the third selected by the two judges, or the tribunal creates the panel. The three judges first try to mediate, but if this fails, they then act as judges. Parties are encouraged not to use lawyers other than to review any contracts that may be necessary.
{92} SUBJ MATTER: INT'L
{123} SETTLEMENT: PRESSURE TO SETTLE
{78} SUBJ MATTER: COMMUNITY

Collins, John F. "Manufacturer/Distributor Litigation and Negotiation Strategy." ALI-ABA Course Materials Journal; June, 2000; 24(3): pp. 41-57.
This article discusses the relationship between the manufacturer and the distributor in the litigation process. It discusses their relationship as vertical instead of horizontal. The article further discusses the franchise arrangement and other types of selling arrangements. Next the article goes on to discuss contractual considerations between the two parties. Finally, the article discuses the provisions of the contract and how they play out when litigation ensues between the manufacturer and the distributor.
{76} SUBJ MATTER: COMMERCIAL

Connor, Laurence D. "The Proposed New Court Rules -- Modern Dispute Resolution for Michigan." Michigan Bar Journal; May, 2000; 79(5): pp. 482-487.
The author highlights the steps taken by Michigan Courts toward expanding the use of various dispute resolution methods. In particular the author gives an overview of the proposed court rules which were drafted by the Michigan Supreme Court Dispute Resolution Task Force in order to facilitate the use of alternative dispute resolution in Michigan Courts.
{21} MED: RELATED PROCESSES-GENERAL
{133} COURT REFORM

Conrod, Monique. "Alternative Dispute Resolution: ADR and Criminal Justice." Canadian Lawyer; May, 2000; 24(5): pp. 43-53.
ADR in the criminal context has been used in Canada when the offender agrees to take responsibility for the crime charged. It focuses on accountability, healing, and closure and helps to restore some general confidence in the criminal justice system. The article also discusses ADR in the workplace and how it provides a non-adversarial method for resolving disputes, opens communication with management, and makes employees feel like management really cares about them.
{82} SUBJ MATTER: CRIMINAL
{93} SUBJ MATTER: LABOR—GENERAL

Cooley, John W. "Shifting Paradigms: The Unauthorized Pratice of Law or the Authorized Practice of ADR." Dispute Resolution Journal; August 2000; 55(3): pp. 72.
John Cooley addresses the threat of "lawyerization" to alternative dispute resolution and offers advice to practitioners on how to defend against it. Cooley rephrases the problem from one of what mediators do in the practice of law, to the practice of ADR itself. Such a shifting of paradigm requires a shifting of rules and then a new search for solutions. The debate over definitions will only be resolved with time.
{151} ROLE OF LAWYERS

Cooley, John W. "Optimists Wanted: In Negotiations, Winners Seize on Expanded-Solution Opportunities; Beyond Winning: Negotiating to Create Value in Deals and Disputes." ABA Journal; November 2000; 86: pp. 92.
This review of the book Beyond Winning: Negotiating to Create Value in Deals and Disputes raves about the new approach given by the authors. Written by members of the Harvard Negotiation Research Project, the book suggests a new way for lawyers to think about mediation. The book suggests a proactive approach with an optimistic yet realistic attitude. The review stresses that the book is a "must read" for anyone involved in the legal profession.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Cottingham, Una ; Slade, Alan. "Mediating In Child Contact: A Mulitdisciplinary Approach." Family Law; December 2000; 30: pp. 933-935.
This article explores the use of mediation at child contact centers in England and Wales. Mediation was recently introduced to the child contact centers as a means for families affected by divorce or separation to achieve long-term plans for contact with their children. The author explains that the use of

mediation is a "pilot project" that appears initially promising. A full evaluation will be compiled in the near future.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)

Coutin, Susan B. "Denationalization, Inclusion, and Exclusion: Negotiating the Boundaries of Belonging." Indiana Journal of Global Legal Studies; Spring 2000; 7(2): pp. 585-593.
Denationalization presents a vexing conflict for immigrants. Citizenship rules create a barrier of exclusion for those who want to become U.S. citizens, or at least be included in American socity. As immigrants realize the legitimizing nature of citizenship, they learn to negotiate their position as citizens by taking advantage of one ground for legalization, and using this to acquire another dimension of citizenship.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Cowell, Susan E. "Pretrial Mediation of Complex Scientific Cases: A Proposal to Reduce Jury and Judicial Confusion." Chicago-Kent Law Review; Summer 2000; 75(3): pp. 981-1014.
The Note discusses the complex nature of scientific evidence and expert witnesses. Often juries and judges have problems understanding and properly evaluating scientific evidence. Some examples are given to illustrate how few people fully understand scientific data. Pretrial mediation is proposed to simplify and structure complex scientific cases. Mediation will help less knowledgeable judges and juries in their understanding of scientific and technical issues, such as environmental torts.
{21} MED: RELATED PROCESSES-GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Cox, David. "Expansion of Family Law Conferencing Program." Law Society Journal; November 2000; 38(10): pp. 31.
The article focuses on the policy of the Legal Aid Commission of New South Wales to send family law cases to conferencing, which is a combination of mediation, conciliation, and evaluation. The author notes the success of conferencing for the financial year 1999 to 2000 and summarizes details of the program's operation, such as fee structure, mediator accreditation, and policy guidelines.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)
{146} ORGANIZATION POLICIES AND RULES
{21} MED: RELATED PROCESSES-GENERAL

Craver, Charles B. "The Clinton Labor Board; Continuing a Tradition of Moderation and Excellence." The Labor Lawyer; Summer 2000; 16(1): pp. 123-150.
When William Gould was nominated to head the NLRB, many thought he would favor labor unions. He has instead been a supporter of employee rights. The author argues that the record of the NLRB in the Clinton years, and throughout its history, is neither ultra-liberal nor ultra-conservative. The author discusses important cases in several areas of labor law as illustrations. He proposes amendments to the NLRA to make it more relevant in today's world.
{93} SUBJ MATTER: LABOR—GENERAL
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

Cremona, Marise. "A Guide to the Enlargement of the European Union, Vol. 2, A Review of the Process, Negotiations, Policy Reforms and Enforcement Capacity." European Law Review; June, 2000; 25(3): pp. 324-325.
This article is a book review based upon the European Institute of Public Administration's training seminars for civil servants and lawyers. The first part of the book deals with the formal requirements for membership into the EIPA. The second part of the book focuses on the enlargement process of the EU and, specifically, with the management of the negotiations that took place. Finally, the third part of the book deals with the characteristics of effective negotiations.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Croson, Rachel; Johnston, Jason Scott. "Experimental Results on Bargaining Under Alternative Property Rights Regimes." Journal of Law, Economics & Organization; April, 2000; 16(1): pp. 50-73.
The authors test predictions regarding the effects of definite versus contingent alternative forms of legal entitlement on bargaining and taking behavior. Using a two-period screening model developed by Johnston, they determine that the way property rights are defined strongly influences private choice between bargaining and taking. Further, they suggest the use of caution in following the reasoning of Calabresi and Melamed and urge development of a more nuanced theory, which this work begins.
{81} SUBJ MATTER: CORPORATE
{125} COMPARISONS: HISTORICAL

Crystal, Nathan M. "The Lawyer's Duty to Disclose Material Facts in Contract or Settlement Negotiations." Defense Law Journal; Spring 2000; 49(1): pp. 1-50.
Lawyers face disciplinary action, legal liability, and rescission of contracts they have negotiated if they fail to disclose information in certain situations. Although the majority of case law seems to imply a duty to disclose material facts, such disclosure may be inconsistent with an attorney's ethical duties of loyalty and confidentiality. The contradiction can be resolved by recognizing the narrow rather than broad duty of disclosure.
{139} ETHICS: MISREPRESENTATION, FAILURE TO DISCLOSE

Cullen, Teresa. "Mediation Mission." Solicitors Journal; August 2000; 144(33): pp. 813.
The author charts her experiences with the mediation buddy group she formed to discuss mediation issues and to cross refer work. The group did not garner mediation business through a passive approach, so it actively sought to heighten mediation awareness. The group has published a brochure and is gaining much respect in the mediation community in the United Kingdom.
{21} MED: RELATED PROCESSES-GENERAL

Cunningham, Richard O. "Commentary on the First Five Years of the WTO Antidumping Agreement and Agreement on Subsidies and Countervailing Measures." Law and Policy in International Business; Spring 2000; 31(3): pp. 897-905.
This article examines how the WTO Antidumping Agreement and the Agreement on Subsidies and Countervailing Measures have affected the United States Department of Commerce and the International Trade Commission. The Antidumping Agreement's sunset review procedures are discussed along with the WTO panel decisions relating to U.S. law or U.S. exporters. Decisions on subsidy issues have proved favorable to the U.S. because they support U.S. policy rather than E.U. policy.
{92} SUBJ MATTER: INT'L
{76} SUBJ MATTER: COMMERCIAL

Cunningham, Scott L. "Do Brothers Divide Shares Forever: Obstacles to the Effective Use of International Law in Euphrates River Basin Water Issues." University of Pennsylvania Journal of International Economic Law; Spring 2000; 21(1): pp. 131-172.
Turkey's current hydroelectric and irrigation GAP project threatens the water supplies of both Syria and Iraq. This article looks at possible international

legal solutions for what could become a potentially violent water supply crisis. The author believes that current international legal structures and the idea of state sovereignty are inadequate to resolve the Euphrates' water crisis. He points out that additional factors complicating the situation include Islamic law, political tension in the region, and population growth.
{92} SUBJ MATTER: INT'L
{84} SUBJ MATTER: ENVIRONMENT

Curriden, Mark. "Putting the Squeeze on Juries." ABA Journal; August, 2000; 86: pp. 52.
This article concerns the recent movement to drastically limit or even eliminate the constitutional right to a trial by jury. While proponents of the movement point to civil juries awarding excess damages, criminal juries erring in favor of defendants, and several areas of law that effectively eliminate jury trial by replacing them with arbitration proceedings, opponents cling to the constitution. These doubters also point to public opinion polls, showing Americans trust juries more than judges or lawyers. So, while the future of jury trials is uncertain, the debate continues to rage.
{133} COURT REFORM

Dauer, Edaward A.; Marcus, Leonard J.; Payne, Susan M.C. "Prometheus and the Litigators; A Mediation Odyssey." Journal of Legal Medicine; June, 2000; 21(2): pp. 159-186.
This article discusses medical malpractice and how the current process pleases neither the doctor nor the patient. The article states that it may be good to change the process such that voluntary mediation is available. This implementation would promote both deterrence and patient safety. The article further discusses methods to be used in implementing this system, and ends with a discussion of the role of attorneys in this process.
{98} SUBJ MATTER: MEDICAL MALPRACTICE

Dauer, Edward A. "Justice Irrelevant: Speculations on the Causes of ADR." Southern California Law Review; November 2000; 74(1): pp. 83-100.
This article deals with the great increase in the use of ADR, as opposed to formal adjudication and specifically with the reasons for this increase. The article claims that the increased use of ADR has little to do with the courts themselves, rather, with larger social movements in which private and public institutions are embedded. Finally, the author suggests that the increased use of ADR is a result of our skepticism of "juridical priests," In other words, we do not like to be out of control of our fate, and ADR seems to give us more control.

{74} SUBJ MATTER: GENERAL

Dauer, Edward A. "When the Law Gets in the Way: The Dissonant Link of Deterrence and Compensation in the Law of Medical Malpractice." Capital University Law Review; Spring 2000; 28(2): pp. 293-305.
Noting the rise in dissatisfaction with the traditional medical malpractice system, Dauer examines the benefits of implementing ADR as an alternative to litigation for medical malpractice cases. Dauer criticizes current tort law as creating a false link between plaintiff monetary compensation and the deterrence of medical mistakes. Dauer believes voluntary medical malpractice mediation may serve patients' and society's objective of preventing the reoccurrences of medical accidents and errors better than litigation.
{98} SUBJ MATTER: MEDICAL MALPRACTICE

Davenport, Philip. "To Be or Not To Be An Adjudicator." Australasian Dispute Resolution Journal; August 2000; 11(3): pp. 172-179.
Author provides a detailed guide to the adjudication process under the Building and Construction Industry Security of Payment Act of 1999. The article discusses the inner workings of the adjudication process, specifically focusing on the rules of adjudication and the role of the adjudicator. The author contrasts adjudication to other forms of alternative dispute resolution and discusses the implications of non-compliance with the Act.
{80} SUBJ MATTER: CONSTRUCTION

Davidson, Faser. "English Arbitration Law 1999." Lloyds Maritime and Commercial Law Quarterly; May 2000; 2: pp. 230-253.
The Author outlines twenty-one English arbitration cases reported in 1999. The cases deal with issues such as arbitrator's powers, confidentiality, whether the court or arbitrator should decide on matters of stays or extensions, and arbitral jurisdiction.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Davidson, Fraser P. "Handbook of Arbitration Practice (book review)." Lloyd's Maritime and Commercial Law Quarterly; May, 2000; (2): pp. 286-287.
The reviewer warmly welcomes the newest edition of this book, not only for its presentation of the general principles of arbitration, but also for its analysis and discussion of specific types of arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Davies, J. Clarence. "Environmental ADR and Public Participation." Valparaiso University Law Review; Spring 2000; 34(2): pp. 389-401.
This article explores the relationship between ADR and public participation in the context of environmental issues. The author discusses the successes and failures of public participation and proposes some ways in which the process may be improved.
{84} SUBJ MATTER: ENVIRONMENT

de Fina, A.A. "Recent Developments in Australia." Journal of International Arbitration; April, 2000; 17(2): pp. 73-78.
Economic crises in many Asian nations has led to the increase in transnational commercial disputes. As a result, the use of dispute resolution provisions and processes has been put to the ultimate test. Specifically, this article examines arbitration procedures in Australia, Indonesia, and Malaysia. In all three of these countries the arbitration laws have been amended, and new legislation enacted, to provide a means of dealing with the rapidly expanding commercial base.
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Deitz, Roger M. "Mediate with an Expert: Contrary to Perceived Role, They Are Catalysts for Resolution." New York Law Journal; June, 2000; 223(122): pp. S6.
This article explores the contributions of paid experts to dispute resolution from the perspective of the advocate, the parties, and the mediator. A properly engaged expert can assist in clarifying issues and anticipating possible outcomes. An expert becomes an obstacle when the expert is or is perceived as biased, when the mediator or opposing party is not informed that an expert will be used, or when multiple experts are present at the mediation.
{21} MED: RELATED PROCESSES-GENERAL
{132} CONFIDENTIALITY
{138} ETHICS: GENERAL
{151} ROLE OF LAWYERS

Delgado, Richard. "Goodbye to Hammurabi: Analyzing the Atavistic Appeal of Restoriative Justice." Stanford Law Review; April, 2000; 52(4): pp. 751.
The article critiques the concept of restorative justice, that the perpetrator needs to be rehabilitated by taking an active role in making restitution to the victim. The court refers the offender to a victim-offender mediation where

restitution is negotiated. The basic criticisms revolve around inconsistencies of results, inequality of bargaining power, waiver of constitutional rights, avoidance of punishment, state control, and limited applicability.
{21} MED: RELATED PROCESSES-GENERAL
{133} COURT REFORM

Devine, Carleen. "How to Use ADR in Planning & Development Disputes." (New South Wales) Law Society Journal; December 2000; 38(11): pp. 3.
This article has been ordered but is not yet available. Upon arrival it will be delivered to the JDR mailbox.

Dinstein, Orrie; Cappuyns, Elisabeth. "Assessing the First 100 Days of ICANN's Dispute Plan.(Internet Corporation for Assigned Names and Numbers)." New York Law Journal; June, 2000; 223(105): pp. 1.
The Internet Corporation for Assigned Names and Numbers (ICANN) approved a new Uniform Dispute Resolution Policy (UDRP). The UDRP is used to resolve disputes involving domain names. Under UDRP a new procedure is in place that includes a formal administrative hearing. The article not only gives an overview of the procedures but also looks at key decisions that were made in the first 100 days and describes some trends.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Donahey, M. Scott; Hilbert, Ryan S. "*World Wrestling Federation Entertainment, Inc. v. Michael Bosman*: A Legal Body Slam for Cybersquatters on the Web." Santa Clara Computer and High-Technology Law Journal; May, 2000; 16(2): pp. 421-427.
The authors review the first case to be decided under the Internet Corporation for Assigned Names and Numbers' Uniform Domain Name Dispute Resolution Policy. An electronic complaint was filed by the World Wrestling Federation over the registration of the domain name <worldwrestlingfederation.com>. An online arbitrator ruled in the WWF's favor, holding that the registrant of the name had used it in bad faith, that he had no legitimate interest in the domain name, and that the name was identical to the WWF's registered trademark.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Donmoyer, Ryan J. "Clinton Says 'Let's Make A Deal,' But Republicans Won't Play." Tax Notes; July, 2000; 88(1): pp. 7-9.

Despite a dramatic increase in the budget surplus projection, Republicans and Democrats cannot agree on tax cuts. The new surplus projection prompted President Clinton to offer his signature on a married couples tax cut if Congress would pass a law for Medicare prescription drug coverage. Yet, Republicans refused to accept the deal, instead electing to stay the course with their single issue approach involving separate legislation already in progress.
{108} SUBJ MATTER: TAX

Donmoyer, Ryan J.; Glenn, Heidi. "House Disclosure Proposal is Sounding Alarms." Tax Notes; May, 2000; 87(5): pp. 599-601.
Article discusses the concerns expressed by many in Congress over section 201 of the Taxpayer Bill of Rights. Concerns arose due to the possibility that the act may abridge the Freedom of Information Act and allow the IRS to withhold tax documents from taxpayers. Topics related to the issue of whether IRS-produced documents in ADR processes are classified as protected taxpayer information or IRS advice.
{144} LEGISLATION

Duffy, Shannon P. "Circuit Says Arbitration Agreement Doesn't Encompass Coverage Issue." New Jersey Law Journal; December 2000; 162(10): pp. 17.
In *State Farm Mutual Automibile Insurance Co. v. Coviello*, the Third Circuit ruled that an insurer retains the right to go to court to determine coverage issues, despite an agreement to arbitrate fault and payment of claim issues. After being injured in an accident and receiving her State Farm policy limit, Coviello attempted to receive uninsured motorist benefits under her daughter's State Farm policy. The court held that State Farm could dispute whether Coviello was entitled to coverage under her daughter's policy in court, rather than in arbitration becasue the arbitration clause included an "express limitation" on the scope of the agreement.
{91} SUBJ MATTER: INSURANCE
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Duthu, N. Bruce. "Incorporative Discourse in Federal Indian Law: Negotiating Tribal Sovereignty Through the Lens of Native American Literature." Harvard Human Rights Journal; Spring 2000; 13: pp. 143-189.
This article advances the notion that "incorporative discourse" within federal Indian law by reading selected indigenous narratives in tandem with traditional canons will aid in reconceptualizing the place of Native Americans within American society.

{124} COMPARISONS: CROSS-CULTURAL

Eastman, Richard A. "Commercial Arbitration -- Representation by Foreign Counsel -- Illegal Practice of Law in California." American Journal of International Law; April, 2000; 94(2): pp. 400-405.
The California Supreme Court case, *Birbrower, Montalbano, Condon & Frank v. Superior Court*, found that if attorneys are to represent clients in arbitration, they must be admitted to practice in the state of California. To determine whether the attorney has been practicing in the state, the court will look at the extent and nature of the contacts with California clients. The article suggests that California remedy the situation through legislation.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{114}3D PARTY: PRACTICE OF LAW

Editorial. "Arbitration Review Venue." New Jersey Law Journal; April, 2000; 160(2): pp. 110.
This article discusses the supreme court's decision in *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.* that held that the FAA allows appeals to be made in any district originally allowable under the general venue statutes. The FAA allows for "rapid and unobstructed enforcement of arbitration agreements. Contracts should specify the venue for judicial review of arbitration to avoid venue shopping.
{133} COURT REFORM

Editorial. "Disregard of the Law." New Jersey Law Journal; November 2000; 162(8): pp. 26.
Opines that New Jersey appellate court decision permitting arbitrators to disregard applicable law was correctly decided.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Ely, Mark H. "Negotiating Installment Agreements With the IRS Collection Division." The Tax Adviser; October 2000; 31(10): pp. 742.
Discussion of types of tax liability cases that are proper for installment programs with the IRS, how lawyers' advocating in front of the IRS collection department can negotiate installment agreements that allow for more than the "allowable" personal living expenses, and how to frame agreements that are free of the threat of levies and seizures.
{108} SUBJ MATTER: TAX
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{151} ROLE OF LAWYERS

Estes, William J. "Beyond Winning: Negotiating to Create Value in Deals and Disputes." New York Law Journal; November 2000; 224(102): pp. 2.
Getting to Yes: Negotiating Agreement Without Giving In was a revolutionary text written twenty years ago about the benefits of the win-win attitude of negotiation over the win-lose attitude of litigation. The authors of a new book, Beyond Winning: Negotiating to Create Value in Deals and Disputes, follow a similar path. It writes about the negative effect that the competitive attorney can have on his own client. The authors of the book advocate a "value creation" strategy so that both parties to a negotiation receive bigger returns. The book was written to help lawyers and their clients negotiate deals and disputes more efficiently via problem-solving, rather than hard-bargaining tactics. The reviewer of this latest text feels that the book is a good addition for any library on negotiation as it does an excellent job of breaking down relationships, players, tensions, and organizations, to demonstrate the inner-workings of the actors in a negotiation.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Estreicher, Samuel; Turnbull, Kenneth J. "The Supreme Court Confronts the Federal Arbitration Act." New York Law Journal; July, 2000; 224(3): pp. 3.
The U.S. Supreme Court has granted certiorari on two cases, *Randolph v. Green Tree Financial Corp.* and *Circuit City Stores v. Adams*, which involve the Federal Arbitration Act. These cases raise the following three issues: (1) whether an order compelling arbitration and dismissing a lawsuit's underlying claims is immediately appealable; (2) whether an arbitration agreement is enforceable if it is silent on the issue of who will pay the fees and costs of arbitration; and 3) whether the Federal Arbitration Act can be applied to any employment agreements.
{96} SUBJ MATTER: EMPLOYMENT (NON-UNIONS)
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Estreicher, Samuel; Turnbull, Kenneth J. "Revised Uniform Arbitration Act Approved." New York Law Journal; November 2000; 224(86): pp. 3.
The growing field of arbitration has brought a need to revise arbitration laws. On August 2, 2000, the National Conference of Commissioners responded to this need and approved a Revised Uniform Arbitration Act. The commissioners have tried to reflect the Supreme Court's proarbitration decisions. This article focuses on some of the key provisions in the revised

act which include the following: prehearing discovery, arbitrator disclosures, consolidation of claims, and arbitrator awards.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{144} LEGISLATION

Estreicher, Samuel; Turnbull, Kenneth J. "Class Actions and Arbitration." New York Law Journal; May, 2000; 223(86): pp. 3.
Plaintiff's have tried to use class action suits to avoid their agreements to arbitrate. This circumvention is not allowed in federal courts. Moreover, class action arbitration cannot be mandated absent express authorization in both the arbitration agreement itself and the applicable arbitration rules.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Estreicher, Samuel; Turnbull, Kenneth J. "New Guidance on Predispute Mandatory Arbitration Agreements." New York Law Journal; September 2000; 224(51): pp. 3.
Author discusses the enforceability of predispute mandatory arbitration agreements that are a condition of employment, particularly focusing on the California State Supreme Court's opinion in *Armendariz v. Foundation Health.* Rejecting the Ninth Circuit's recent holdings, the Court held that predispute agreements were binding even as to Title VII claims, subject to some minimum employee protections. The author concludes that while other jurisdictions may or may not choose to follow Armendariz, employers should draft conservative agreements in order to sustain their validity.
{93} SUBJ MATTER: LABOR—GENERAL

Fazzi, Cindy. "A Miscellany of Disputes." Dispute Resolution Journal; August 2000; 55(3): pp. 89.
Derek Roebuck's book offers interesting tales of dispute resolution gleaned from classic literature. Compiled from fables, legends, and stories about arbitration or mediation, Roebuck describes the origins of some concepts and alternative theories for others. His book offers a novel take on a time-honored subject and is sure to entertain.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Fazzi, Cindy. "Beyond Winning: Negotiating to Create Value in Deals and Disputes." Dispute Resolution Journal; August 2000; 55(3): pp. 88.
Beyond Winning may be tailored for lawyers, but it offers tips for negotiating that benefit everyone. The authors recognize that negotiation is omnipresent and make it more accessible and understandable. Dividing the subject into dispute resolution and deal making, the authors discuss the

tensions inherent in negotiating and how best to manage them. This book offers both practical and academic advice on how anyone can become a more effective negotiator.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Fazzi, Cindy. "Alternative Dispute Resolution: A Practical Guide for Resolving Government Contract Controversies. (Book Review)." Dispute Resolution Journal; May, 2000; 55(2): pp. 88.
Cindy Fazzi reviews *Alternative Dispute Resolution: A Practical Guide for Resolving Government Contract Controversies.* The review describes how this book, a team effort published by the American Arbitration Association, explains ADR techniques and their effectiveness in Government disputes. The book explains how recent government policies have favored ADR, but Fazzi criticizes the book for over-emphasizing the negative aspects of ADR techniques.
{88} SUBJ MATTER: GOV'T CONTRACTS

Fazzi, Cindy. "A Practitioner's Guide to Construction Law." Dispute Resolution Journal; August 2000; 55(3): pp. 89.
John Cameron's book on construction contains an informative chapter on alternative dispute resolution. Based on the premise that "[t]he wisdom of conducting frank negotiations between principals when a dispute arises is unquestionable," Cameron describes how mediation and arbitration can be useful tools if used properly. He addresses legal issues in alternative dispute resolution and cites cases showing how these issues have evolved.
{80} SUBJ MATTER: CONSTRUCTION

Fazzi, Cindy. "The Violence-Prone Workplace: A New Approach to Dealing with Hostile, Threatening, and Uncivil Behavior. (Book Review)." Dispute Resolution Journal; May, 2000; 55(2): pp. 87.
Dispute Resolution Journal Editor Cindy Fazzi reviews Richard Denenberg and Mark Braverman's book, *The Violence Prone Workplace.* The review discusses the different sections of the book, which includes chapters on violence-prevention, using dispute resolution in the workplace, and crisis management programs. Fazzi applauds Denenberg and Braverman for their application of dispute resolution techniques to this difficult issue of workplace violence.
{96} SUBJ MATTER: EMPLOYMENT (NON-UNIONS)

Feibleman, Gilbert,; Saucy, Paul. "The Art of Divorce Settlement Negotiations." American Journal of Family Law; Summer 2000; 14(2): pp. 83-92.
Negotiating skills become more important than ever as lawyers enter the settlement of matrimonial disputes in noncourtroom settings. The emotions surrounding divorce issues, and the long-term nature of the relationship make this kind of negotiation uniquely suited to a win-win philosophy. This article gives advice in skill areas that can increase the chances of favorable settlement results. They include understanding the psychology of divorce, understanding the facts and law of the case, understanding the client's goals, knowing the opposing lawyer, and knowing the judge.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)
{151} ROLE OF LAWYERS

Feinstein, Fred. "The Challenge of Being General Counsel (National Labor Relations Board)." The Labor Lawyer; Summer 2000; 16(1): pp. 19-41.
As general counsel of the National Labor Relations Board from 1994-1999, the author's goals were greater uniformity and predictability in collective bargaining election case processing, greater emphasis on remedies like injunction, and focus on quality in case handling. He allocated resources recognizing the relative importance of cases, upgraded technology at the Board, transferred work between regions, and increased manager responsibilities. The author discussed the role of controversy in NLRB activities. Though many improvements have been made, litigation delays remain a problem for the Board.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{87} SUBJ MATTER: GOV'T
{146} ORGANIZATION POLICIES AND RULES

Fells, Ray. "Of Models and Journeys: Keeping Negotiation and Mediation on Track." Australasian Dispute Resolution Journal; November 2000; 11(4): pp. 209-19.
The author addresses perspectives through which negotiation can be understood by the mediators who assist negotiation. In particular, the author suggests that the metaphor of a "journey" be used to understand the process of mediation. It is suggested that the view of mediation as a structured process is problematic: the mediator, rather than imposing a process on negotiating parties, should employ a "tool bag" of resources to assist the parties.
{21} MED: RELATED PROCESSES-GENERAL

Fitzgibbon, Susan A. "After Gardner-Denver, Gilmer and Wright: The Supreme Court's Next Arbitration Decision." Saint Louis University Law Journal; Summer 2000; 44(3): pp. 833-848.
A line of Supreme Court cases involving employees' statutory claims is discussed. The Article focuses on Wright, a case in which the Court held that a judicial waiver of a union employee's statutory claim had to be clear and unmistakable. Benefits of arbitrating such claims are presented, and the author concludes that enforcing clear and unmistakable judicial waivers is a good policy.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL
{94} SUBJ MATTER: LABOR—DISCRIMINATION

Flanagan, Gary W. "Expanded Grounds for Judicial Review of Employment Arbitration Awards." Defense Counsel Journal; October 2000; 67(4): pp. 488.
This article discusses the need for reform of Arbitration procedures, especially in employment disputes. The author concludes that if reform does not happen, then federal courts will follow the Second Circuit's lead in vacating arbitration awards on the basis of "manifest disregard of the law, the facts or both."
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{93} SUBJ MATTER: LABOR—GENERAL

Flynn, Martin; Stanton, Sue. "Trial by Ordeal: The Stolen Generation in Court." Alternative Law Journal; April, 2000; 25(1): pp. 75-78.
This piece addresses the effects of the reversal of *Cubillo & Gunner v. Commonwealth*, advocating a reconciliatory approach to suits by the "stolen generation". The author argues that this approach will eschew strike out applications and reliance on the Statute of Limitations as a defense. Ultimately, it will allow evidence in these cases to be received satisfactorily to both sides and with increased sensitivity.
{77} SUBJ MATTER: CIVIL RIGHTS
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)
{92} SUBJ MATTER: INT'L

Forsythe, Matthew. "The Treatment of Arbitration Waivers Under Federal Law." Dispute Resolution Journal; May, 2000; 55(2): pp. 8-16.
This article analyzes recent, influential federal court cases' treatment of the waiver of contractual arbitration rights. Factual considerations the courts have found significant, including amount of delay involved, parties' intent to

arbitrate, and whether the party opposing arbitration has suffered prejudice, are examined light of the well-established presumption against the wavier of a party's right to arbitrate. After reviewing the court-applied standards, Forsythe determines that the presumption against waiver is neither plenary nor unqualified.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Franklin, Darren M. "The Mass Tort Defendants Strike Back: Are Settlement Class Actions a Collusive Threat or Just a Phantom Menace?." Stanford Law Review; October 2000; 53(1): pp. 163.
This note discusses settlement classes and whether they provide more complete recovery for the injured parties, or instead give attorneys a reason to "sell-out" future plaintiffs. Additionally, the note analyzes and critiques recommended amendments to Rule 23. The author concerns himself with whether or not settlement classes lead to tort abuse and attorney collusion.
{110} SUBJ MATTER: OTHER TORTS
{123} SETTLEMENT: PRESSURE TO SETTLE
{137} EFFECTS OF PROCESS OF NON-PARTICIPATORY PARTIES

Freeman, Jody; Langbein, Laura I. "Regulatory Negotiation and the Legitimacy Benefit." New York University Environmental Law Journal; December 2000; 8(1): pp. 60-151.
The authors present new empirical research regarding regulatory negotiation and relate their conclusions from the study. The authors state that the study of the Environmental Protection Agency (EPA) supports proponents of negotiated rulemaking and discounts criticism of the process. According to the authors, the study is important because only one other study has actually compared conventional rulemaking with negotiated rulemaking. Therefore, this study provides a factual basis for the scholarly debate over negotiated rulemaking.

Freyer, Dana H. "United States Recognition and Enforcement of Annulled Foreign Arbitral Awards: The Aftermath of the Chromalloy Case." Journal of International Arbitration; April, 2000; 17(2): pp. 1-10.
Freyer examines the implications of the Baker Marine and Spier cases on Chromalloy's controversial, broad enforcement of annulled awards. She concludes that these cases will translate to an unwillingness within U.S. courts to consider enforcement of foreign awards annulled in a country of origin unless an agreement provides that U.S. arbitration law governs, since both Barker Marine and Spier rejected enforcement.
{92} SUBJ MATTER: INT'L

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Gagliardo, Thomas J. "ADR's Growing Role in Employment." The Maryland Bar Journal; 2000; 33(3): pp. 38.
The Fourth Circuit United States Court of Appeals compels plaintiffs to arbitrate discrimination claims. The federal Equal Employment Opportunity Commission expanded its voluntary mediation program.
{93} SUBJ MATTER: LABOR—GENERAL

Gaillard, Emmanuel. "Alternative Dispute Resolution (ADR) a la Francaise." New York Law Journal; June, 2000; 223(105): pp. 3.
Alternative dispute resolution is being regularly promoted in France as a means to relieve the burdens of the courts. ADR was used throughout France's history and, today, is used as an optional alternative especially in the areas of labor and family law. Attempts have been made to use mediation in the criminal law area. This is used to provide reparation to the victims. ADR is being used in France with more frequency and success.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L
{125} COMPARISONS: HISTORICAL

Gaillard, Emmanuel. "NAFTA Dispute Arbitration Under Auspices Of International Center." New York Law Journal; August, 2000; 224(23): pp. 3.
The drafters of the 1992 NAFTA aimed to encourage foreign direct investment by offering protection for private investors. A primary means of achieving this goal was convincing member states to submit to arbitration under the International Centre for Settlement of Investment Disputes (ICSID). It seems the finality offered by its judgments and the guarantees promised the investor, have made the ICSID the preferred method for resolving disputes. This has effectively alienated the traditional specific arbitration agreement requirement.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Gaillard, Emmanuel. "Waiving State Immunity from Execution in France: An Update." New York Law Journal; October 2000; 224(67): pp. 3.
The article examines France's current policy with respect to a state's waiver of immunity from execution. It explains the significance of the Cour de cassation's decision in *Creighton v. Qatar*, which offered guidance as to what constituted such a waiver and to what degree such a waiver must be explicit. Moreover, it explains that this decision represents a very significant step forward in ensuring the enforcement of awards against states.

{124} COMPARISONS: CROSS-CULTURAL
{76} SUBJ MATTER: COMMERCIAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Gaillard, Emmanuel. "Enforcement of Arbitral Awards Across International Boundaries." New York Law Journal; April, 2000; 223(66): pp. 3.
Several countries are enforcing arbitration awards that have been vacated in other countries. These countries view the site of the arbitration as a convenience and not binding upon the enforcement of the award. Many U.S. courts have not followed suit, basing their holdings on the theory that parties waived their rights to U.S. appeals when they agreed to a foreign arbitration.
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Galasso, Peter J.; Greenberg, Elayne E. "Setting Aside a Mediated Divorce Agreement." New York Law Journal; November 2000; 224(87): pp. 1.
This article discusses the unique challenges divorce presents to mediation. Mediation may be ill-suited for DOMESTIC REL..ations disputes. Mediators are urged to heed legal standards and recomit themselves to confidentiality.
{21} MED: RELATED PROCESSES-GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)

Gallagher, Mary P. "Arbitrator's Power To Reconsider Ruling on Punitives Is Challenged." New Jersey Law Journal; December 2000; 162(13): pp. 4.
An employer, who fought to compel arbitration of a discrimination claim, is trying to vacate the arbitrators' award of $1 million in punitive damages. The employer claims that the panel had no power to revise its earlier denial of punitive damages despite an intervening change in the law. The U.S. Supreme Court granted certiorari on the issue in *Circuit City Stores Inc. v. Saint Clair Adams.*
{94} SUBJ MATTER: LABOR—DISCRIMINATION
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Gallagher, Mary P. "Online Dispute Resolution: Bringing Both Sides Together in Cyberspace." New Jersey Law Journal; November 2000; 162(9): pp. 4.
A number of internet-based dispute resolution services are now available as an alternative to the traditional method of mediation and arbitration. Cybersettle, ClickNsettle, and Claimsettle are but three of the new breed of online dispute resolution companies. Each site essentially works the same,

wherein there are a series of rounds to make demands and offers and if the spread is narrow enough then the site will split the difference to create the settlement. Fees include a registration fee as well as a sliding scale fee based on the size of the settlement. The sites have become quite successful with Cybersettle having settled over 40,000 claims since its inception. The claimed advantages of online dispute resolution include elimination of posturing, getting around phone tag, and it avoids giving away the parties' strategy.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Gallagher, Mary P. "First Emergent-Relief Arbitration under PIP is Quick and Painless." New Jersey Law Journal; May 2000; 160(5): pp. 5(col.1).
Regular arbitrations last an average of three months with additional time for adjournments while the new rules of the AAA, governing Personal Injury Protection arbitrations, last about five days.
{128} REQUIREMENTS: STATUTORY OR RULES
{144} LEGISLATION

Galton, Eric. "Mediation of Medical Negligence Claims." Capital University Law Review; Spring 2000; 28(2): pp. 321-330.
Drawing on his ten years of experience mediating medical negligence claims, Galton believes that the goals of medicine and the goals of the civil justice system are inopposite. Galton believes that the goals of mediation, including the enhancement of communication and allowance for conciliation and restoration of relationships, are consistent with medicine's ultimate goal of healing. Galton, therefore, believes mediation is a superior system for resolving medical negligence disputes.
{98} SUBJ MATTER: MEDICAL MALPRACTICE

Galton, Eric R.; Kovach, Kimberlee K. "Texas ADR: A Future so Bright we Gotta Wear Shades." St. Mary's Law Journal; Summer 2000; 4(31): pp. 949-985.
The author takes a comprehensive look at a number of issues pertaining to the use of alternative dispute resolution in Texas since the enactment of the Texas Alternative Dispute Resolution Act thirteen years ago. First, the author considers the increasing use of ADR, and reasons why such increase will continue in the future. Next, the author explores some of the general principles of ADR practice, such as the role of the courts and confidentiality in a Texas arbitration proceeding. Finally, the author predicts that the increasing popularity of ADR, in legal education and successful practice, as

well as in both Texas state and federal courts, ADR processes will necessarily become more familiar.
{74} SUBJ MATTER: GENERAL

Garza, Aric J. "Resolving Public Policy Disputes in Texas Without Litigation: The Case for Use of Alternative Dispute Resolution by Governmental Entitites." St. Mary's Law Journal; Summer 2000; 4(31): pp. 987-1014.
While the use of ADR to resolve traditional legal disputes is increasing, public policy disputes differ from the traditional legal dispute and very rarely enjoy the benefits of resolution by an ADR process. This article advocates the use of mediation to facilitate the resolution of public policy disputes. The author identifies recent Texas legislation aimed at increasing the use of ADR among governmental entities, and some of the unique issues involved in a public policy dispute. The author examines cases involving the use of ADR in a public dispute and analyzes confidentiality concerns in public disputes. The author concludes that ADR is the most effective manner to resolve public policy disputes.
{87} SUBJ MATTER: GOV'T
{102} SUBJ MATTER: PUBLIC POLICY

Gee, Juliet L. "Approaching Negotiations; Playing a Cooperative Game." GP Solo & Small Firm Lawyer; October 2000; 17(7): pp. 24-27.
Describes various negotiation types and strategies for negotiating. The two types of negotiations are voluntary negotiations and mandatory settlement negotiations. One should approach negotiations by opening up to the other side and portraying a cooperative mood. The paper discusses the importance of preparing for negotiations and what various things can be done to prepare. The paper also discusses court involvement in negotiations and post judgment negotiations.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Gelinas, Fabien. "Arbitration and the Challenge of Globalization." Journal of International Arbitration; August 2000; 17(4): pp. 117-22.
Focus is on issues that the author feels will require special attention in the coming years with regard to arbitration in the international context. The article first focuses on the need to meet the increasing volume of demand for international arbitration and the need for the international arbitration community to be flexible in crafting dispute resolution methods. Finally, the author reviews some national and international legislation and norms with an

emphasis on creating the right legal environment to meet the needs of international arbitration in the future.
{92} SUBJ MATTER: INT'L
{74} SUBJ MATTER: GENERAL

Genton, Pierre M.; Schawb, Yves A. "The Role of the Engineer in Disputes Related More Specifically to Industrial Projects." Journal of International Arbitration; August 2000; 17(4): pp. 1-17.
Article focuses on the role that lawyers and engineers play in resolving disputes that occur during massive construction projects. The primary thrust of the article is the role that the engineer can play in the ADR process and in mediation, in the alternative. Discussion is also devoted to the participation of lawyers and engineers in the Dispute Resolution Board proceedings.
{92} SUBJ MATTER: INT'L
{76} SUBJ MATTER: COMMERCIAL
{80} SUBJ MATTER: CONSTRUCTION

Gershenfeld, Walter J.; Gershenfeld, Gladys. "Current Issues in Discharge Arbitration." Dispute Resolution Journal; May, 2000; 55(2): pp. 48-55.
The authors applaud arbitration's increased presence in labor-relations disputes, and examine three controversial issues of concern in the discipline before lending their support to broad authority in the determination of a remedy. First they examine the arbitrator's role in determining a remedy, and the surrounding issues of just cause. Next they examine when the basis for discharge may be altered. Lastly, the authors explore the appropriate use of employee records in labor arbitration.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{96} SUBJ MATTER: EMPLOYMENT (NON-UNIONS)

Gitchel, Jeffrey M. "Domain Dispute Policy Provides Hope to Parties Confronting Cybersquatters." Journal of the Patent and Trademark Office Society; September 2000; 82(9): pp. 611-617.
Trademark holders who wish to set up their websites using their trademark names frequently find that the desired domain name is already registered to a third party – a cybersquatter. The article discusses the arbitration option to settle domain name disputes provided in the Uniform Domain Name dispute resolution policy.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{76} SUBJ MATTER: COMMERCIAL

{81} SUBJ MATTER: CORPORATE

Glasner Q.C., Kenneth. "Contract Disputes: The Role of ADR." Dispute Resolution Journal; August 2000; 55(3): pp. 50-55.
This article provides a brief summary of alternative dispute resolution methods, namely arbitration and mediation. This article also discusses inserting a standard clause in commercial contracts if the parties wish to implement ADR procedures in the event of a dispute. In addition, the author provides contact information for service providers in British Columbia and the United States that can assist parties with the ADR process.
{21} MED: RELATED PROCESSES-GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{76} SUBJ MATTER: COMMERCIAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Glass, Amy J.; Iverson; Dale Ann; Zondervan, Deborah Boersma. "Proposed Court Rules Introduce Mediation-Specific Qualifications for Neutrals Serving in Court-Annexed ADR Programs." Michigan Bar Journal; May, 2000; 79(5): pp. 510-513.
The authors look at the proposed Michigan Court Rules, which would allow non-lawyers to act as mediators for court-sponsored ADR as long as they fulfill the requisite training program. The authors argue this approach is warranted because it furthers the public's interest in having more access to mediation services as long as they are fair and safe.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{21} MED: RELATED PROCESSES-GENERAL
{114}3D PARTY: PRACTICE OF LAW
{133} COURT REFORM

Gleason, Carolyn B.; Walther, Pamela D. "The WTO Dispute Settlement Implementation Procedures: A System in Need of Reform." Law an Policy in International Business; Spring 2000; 31(3): pp. 709.
When the WTO Agreement was signed in 1994, its new procedures for implementing dispute settlement rulings were widely hailed as improvements over the procedures of the General Agreement on Tarriffs and Trade (GAATT). This article reviews the implementation procedures of the WTO Agreement. It explores the changes that would improve the existing implementation procedures and would help reduce the incidence of WTO non-compliance. The article closes with a discussion of developments that will affect the effectiveness of the WTO implementation procedures in the future.

{92} SUBJ MATTER: INT'L

Glenn, Heidi. "Houghton Pushes Nondisclosure Bill in the Waning Days of 106th Congress." Tax Notes; October 2000; 89(4): pp. 433-436.
This article dealt with the desire of Representative Amo Houghton to keep large multinational coporations' prefiling agreements, competent authority agreements, and other similar documents out of the public eye by not requiring them to be disclosed. However, the article goes on to say that critics are skepitical of the bill because it could have the effect of "shut[ting] off from public disclosure most agency working law in the international tax law area." Representative Houghton, and other supporters, argue that the bill will simply keep private negotiations that occur between taxpayers, who are the large multinational corporations, and the IRS.
{108} SUBJ MATTER: TAX
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Glenn, Heidi. "Bush, Congress Take First Steps in Tax-Cut Pas De Deux." Tax Notes; December 2000; 89(13): pp. 1671-1672.
The specifics and the likelihood of passage of President-elect George Bush $1.3 trillion, ten year tax cut agenda are discussed.
{108} SUBJ MATTER: TAX

Glenn, Heidi. "For Now, Tax Table Seats Only Two." Tax Notes; October 2000; 89(3): pp. 319-321.
Until recently, tax cuts had been in a stalemate because of unfinished budget bills. However, a tax cut package is now in the works. Glenn describes the proposals and discusses the various positions and negotiations taking place between lawmakers, ranging from a telephone services excise tax repeal, to small business tax programs, to health insurance.
{108} SUBJ MATTER: TAX

Glenn, Heidi. "Budget Bills Hold Tax Cut Hostage." Tax Notes; October 2000; 89(2): pp. 167-169.
Glenn describes the efforts of lawmakers trying to negotiate tax cuts and a budget while running out of time. She summarizes, "Congressional lawmakers, preoccupied with their appropriations work last week, made little headway on an end game strategy for their tax cut priorities. Nevertheless, aides and lawmakers insist a handful of tax cuts remain on the GOP to-do list."
{108} SUBJ MATTER: TAX

Glenn, Heidi; Rojas, Warren. "White House, Congress Agree on Budge, Tax Deal." Tax Notes; December 2000; 89(12): pp. 1503-1506.
Congressional negotiators and the Clinton administration struck a budget and tax deal, which includes roughly $31 billion in ten year tax cuts.
{108} SUBJ MATTER: TAX

Glenn, Heidi; Rojas, Warren. "Tax Bill Seems to be Moribund; Resurrection Likely Next Year." Tax Notes; December 2000; 89(11): pp. 1335-38.
Proposed tax cut bill is unlikely to pass in 2000; House and Senate Leaders intend to wait until 2001 to push for tax relief. Bankruptcy Reform bill passed in the Senate despite efforts by Democrats to block it.
{108} SUBJ MATTER: TAX

Glenn, Heidi; Rojas, Warren. "Congress Gives Up the Ghost for Two Weeks." Tax Notes; November 2000; 89(6): pp. 703.
This article discusses the impact of the United States' Senate passage of the FSC repeal and the U.S. presidential election on tax cuts and bankrutcy reform.
{108} SUBJ MATTER: TAX

Glenn, Patrick. "Globilization and Dispute Resolution." Civil Justice Quarterly; April, 2000; 19: pp. 136-153.
This article discusses the role of globalization, acceleration of means of communication, on informal justice (ADR) and substantive justice (traditional litigation). The author suggests that both types of justice have been significantly influenced by globalization to the extent that there is less of a distinction between the two types of justice. Thus there are more options for parties choosing dispute resolution techniques in the complex interdependent world today.
{74} SUBJ MATTER: GENERAL

Goldstein, Marc J. "International Commercial Arbitration." International Lawyer; Summer 2000; 34(2): pp. 519-532.
Author details the debate within international arbitration regarding judicial enforcement of annulled arbitration awards. In *Baker Marine, Ltd. v. Chevron, Ltd.*, the U.S. Court of Appeals for the Second Circuit decided that standards for setting aside arbitration awards, at the place of arbitration, are appropriate so long as applied by competent courts. Therefore international decisions vacating judgments should be respected by U.S. courts under the New York Convention.

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{92} SUBJ MATTER: INT'L

Golvan, George. "How To Negotiate With Difficult 'People'." Law Institute Journal; May, 2000; 74(4): pp. 76-79.
Negotiating with difficult and emotional negotiators often results in a hollow victory created from a fight in which all sides are not pleased, or one side giving up as they are afraid to deal with the emotional negotiator. The article lists characteristics to identify a 'difficult' negotiator, three possible motivations to explain the use of difficult strategies during negotiations, the dangers of these strategies to the outcome, and nine methods to get around such strategies for more effective negotiation.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Goodmark, Leigh. "Alternative Dispute Resolution and the Potential for Gender Bias." Judges Journal; Spring 2000; 39(2): pp. 21.
Mediation has become the preferred method of alternative dispute resolution in family law matters. The author suggests that gender bias presents genuine issues for concern to all involved, and unless these issues are recognized and addressed properly, mediation will likely fail for many women as an alternative to litigation. This article analyzes mediation in the context of power imbalances brought about by domestic violence, economic factors, and emotions.
{147} POWER IMBALANCE

Gotanda, John Yukio. "Setting Arbitrators' Fees: An International Survey." Vanderbilt Journal of Transnational Law; October 2000; 33(4): pp. 779-827.
The article discusses the results of a survey of individuals who practice in the area of international arbitration. Specifically, it focuses on the different methods of fee calculation, and different policies regarding cancellation and commitment fees. The Article then considers the implications for U.S. arbitrators who are considering the adoption of cancellation and commitment fees.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Goulder, Robert. "Baucus attacks EU Gamesmanship on WTO Disputes." Tax Notes; June, 2000; 87(13): pp. 1690.
Senator Max Baucus recently attacked the European Union for attempting to delay a World Trade Organization's negative finding on the EU's banana and

beef import banning measures. Baucus complains that the EU's inaction after the sanction seriously undermines the credibility of the WTO dispute settlement system. In contrast, Baucus commended the U.S. for prompt action after the WTO's negative finding on the U.S. FSC tax regime. U.S. Ambassador Charlene Barshefsky added that the WTO's dispute settlement mechanism was "more reliable and efficient" than its predecessor under the General Agreement on Tariff and Trade.
{92} SUBJ MATTER: INT'L

Goulder, Robert; Gnaedinger, Chuck. "U.S. and E.U. Agree to One-Month Extension for FSC Dispute." Tax Notes; October 2000; 89(2): pp. 169-170.
U.S. and EU trade official agreed on September 30 to extend the deadline for abolishing the U.S. foreign sales corporation tax regime for one month, when it became stalled in the Senate in the U.S. The parties agreed to formally request the extension from the WTO, with EU officials promising not to challenge the extension or impose sanctions on the U.S.
{108} SUBJ MATTER: TAX
{92} SUBJ MATTER: INT'L

Grappo, David. "Questions Litigators Ask About Mediation." Dispute Resolution Journal; May, 2000; 55(2): pp. 32-38.
Grappo briefly addresses the most common questions that litigators ask about mediation as it becomes a more popular alternative to traditional litigation. He encourages litigators to develop a non-adversarial style of mediation as the most effective means of resolving a dispute for many reasons, including the aim to preserve the parties' ongoing relationship.
{21} MED: RELATED PROCESSES-GENERAL

Greenbaum, Robert S. "Dispute Resolutions and Counsel: Changing Perceptions, Changing Responsibilities." Dispute Resolution Journal; May, 2000; 55(2): pp. 40-44.
This article argues that attorneys have a professional duty to educate clients about their dispute resolution options, and examines the issue in the context of contract negotiation. Greenbaum discusses the benefits of considering the available methods of dispute resolution before problems between parties arise, allowing clients to use informed judgment in crafting an agreement to ensure they will achieve the best possible result against the contingency of future disputes.
{151} ROLE OF LAWYERS

Griffin, Peter R. "Recent Trends in the Conduct of International Arbitration: Discovery Procedures and Witness Hearings." Journal of International Arbitration; April, 2000; 17(2): pp. 19-29.
Discussing the methods by which discovery and witness hearings can be implemented in international arbitration, the author sets out three methods to establish discovery procedures: by agreement, by provisions in arbitration rules, and by inquiry into domestic law. Griffin also examines the use of testimony in terms of whether to allow testimony, who may be a witness, and procedures for hearings.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Gromala, John A. "The Use of Mediation in Estate Planning." Trusts & Estates; September 2000; 139(9): pp. 78.
Discussion of the use of mediation during estate planning in order to avoid disputes after death. A neutral mediator allows complex emotional decisions to be made comfortably and fairly. The mediator is better equipped to provide an equitable solution than members of the family who may allow emotions to affect their decisions. The outcome is more likely to be "interests-based" rather than "rights-based."
{74} SUBJ MATTER: GENERAL
{134} DISPUTE PREVENTION
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)

Grove, Peter. "A View From the Centre." The Advocate; September 2000; 58(5): pp. 733.
The Executive Director of the British Columbia International Commercial Arbitration Centre explains that the Commercial Arbitration Act governs arbitration in British Columbia. The Act provides for limited judicial enforcement of arbitration awards. The author explores ways in which a person can seek enforcement and ways to oppose it. The author suggests that ensuring proper procedures are followed is one excellent way to ensure judicial enforcement.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Gupta, Sunil. "No Power to Remove a Biased Arbitrator Under the New Arbitration Act of India." Journal of International Arbitration; August 2000; 17(4): pp. 123-130.
This article expresses concern that the new act, while attempting to be progressive and internationally acceptable, fails to provide a method of

removing biased arbitrators at the threshold of arbitration rather than just at the post-award stage. It advocates including such a provision in order to ensure fair arbitrations (not just awards), economy of time and money, and a necessary check upon arbitrators and deterrent against bias.
{92} SUBJ MATTER: INT'L
{138} ETHICS: GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

Gutekunst, Claire P.; Hoffman, Gregory H. "Focus on Confidentiality." New York Law Journal; May, 2000; 223(103): pp. 9.
There are currently no definitive guidelines on confidentiality in mediation in New York. This article provides an overview of the rules and case law concerning confidentiality in mediation. The conclusion is that legislation would be helpful by increasing confidence of participants and making them more willing to be open and candid.
{21} MED: RELATED PROCESSES-GENERAL

Halpern, Marcelo; Mehrotra, Ajay K. "From International Treaties to Internet Norms: The Evolution of International Trademark Disputes in the Internet Age." Universiity of Pennsylvania Journal of International Economic Law; Fall 2000; 21(3): pp. 523-561.
Halpern and Mehrotra examine the development of an Internet Common Law that has arisen in the area of international trademark disputes. Because international treaties are becoming less practical in our fast-paced Internet society, private contracts and cyberspace social norms are displacing the goal of multinational cooperation. The authors argue that international trademark disputes are only one example in which the Internet is creating more democratic methods of decisionmaking.
{92} SUBJ MATTER: INT'L
{87} SUBJ MATTER: GOV'T

Hamblett, Mark. "Naming U.S. Judge to Arbitrate Voids Dispute Resolution Pact." New York Law Journal; May, 2000; 223(92): pp. 1.
In *Diagnostic Radiology Associates v. Brown*, two parties in a construction contract erronously assumed that they could include in their arbitration agreement a clause that assigned all disputes to a specific federal judge.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Hamblett, Mark. "Panel Limits Reviews of Arbitration Awards; Clear Disregard of Law Standard Recognized." New York Law Journal; August 2000; 224(26): pp. 1.

Discussing the Second Circuit Court of Appeals case, *Greenberg v. Bear, Stearns & Co. Inc.*, in which the court found that federal district court jurisdiciton exists where the petitioner seeks to vacate an arbitration award on the grounds that the arbitrator showed a "manifest disregard for the law."
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Hamilton, Amy. "IRS Corporate Division Leaders Kick Off Summer Tour." Tax Notes Today; July, 2000; 88(2): pp. 153-156.
Leaders of the IRS's new large and midsize operating division are holding introductory meetings with business taxpayers and practitioners in seventeen major cities. The meetings will serve as forums for the leaders to discuss the division's outlook, address issues raised by constituents and solicit suggestions, and begin building working partnerships. The division has reviewed three new processes that have the potential to significantly speed and improve dispute resolution between taxpayers and the IRS.
{108} SUBJ MATTER: TAX

Hamilton, Amy. "LMSB Division Pushinng New Age Dispute Resolution Techniques." Tax Notes; October 2000; 89(1): pp. 18-21.
LMSB has created three issue management tools: (1) prefiling agreements that allow corporate taxpayers to avoid the escalation of dispute mechanisms; (2) a comprehensive case resolution process that will allow large business to request the resolution of all open issues for all open tax years under examination by the corporate division, in Appeals or before the U.S. Tax Court, and (3) a industry issue resolution process that will allow the corporate division to resolve common issues.
{108} SUBJ MATTER: TAX
{81} SUBJ MATTER: CORPORATE
{146} ORGANIZATION POLICIES AND RULES

Hamilton, Amy. "New Regs on Qualified Intermediary Withholding Agreements out Soon." Tax Notes; May, 2000; 87(7): pp. 891.
The IRS will release a new section 1441 qualified intermediary withholding agreement regulation. One modification to the regulation is that the IRS will apply penalties on a forward-going basis to non-qualified intermediaries where they fail to provide withholding agents with required documentation. There have been twelve applications to participate and the IRS expects 500 by the end of the year.
{108} SUBJ MATTER: TAX

Hamilton, Amy. "IRS to Bring Together Corporate Taxpayers, Exam, Appeals." Tax Notes; May, 2000; 87(5): pp. 610.
The article provides a brief report explaining the efforts being made to hasten the speed of ADR settlements by allowing corporate taxpayers to negotiate with IRS Appeals and Examinations officials before the completion of an audit.
{108} SUBJ MATTER: TAX

Hammond, Steven A. "The Art of the Missed Opportunity: How U.S. Courts Declined to Assist Private Arbitral Tribunals Under the U.S. Law Authorizing Discovery in Aid of Foreign and International Proceedings." Journal of International Arbitration; August 2000; 17(4): pp. 131-143.
Hammond re-examines two circuit court opinions that declined to include private arbitrations in the coverage of 28 U.S.C. § 1782, which allows foreign tribunals to seek U.S. courts' assistance in obtaining evidence. He suggests that they could and should have reached the opposite result if they had (1) interpreted the plain meaning of the statute according to common sense and (2) looked differently at the primary purpose of the statute and the policy implications of their decision.
{92} SUBJ MATTER: INT'L
{144} LEGISLATION

Harders, Julie. "Too Good to Last? Budget Cuts Force the EEOC to Terminate Contract Mediators from Its New, Highly Touted Program." ABA Journal; April, 2000; 86: pp. 30.
The EEOC instituted a mediation program which has been faced with budget cuts that forced the EEOC to terminate some of its contracted mediators, even though the cuts may be temporary. The cut is likely to produce two results. Not only will the amount of mediations be down, but the number of official investigations would go up since mediation would not be available.
{21} MED: RELATED PROCESSES-GENERAL
{94} SUBJ MATTER: LABOR—DISCRIMINATION

Hardin, Paulette Delphene. "Sacrificing Statutory Rights on the Alter of Pre-Dispute Employment Agreements Mandating Arbitration." Capital University Law Review; Spring 2000; 28(2): pp. 455-477.
Hardin takes a hard-line stand against current jurisprudence favoring and upholding mandatory pre-dispute agreements to arbitrate statutory claims between employers and employees. Hardin believes employers' superior bargaining power often leads to a significant sacrifice of individual rights when employees are forced to sign arbitration agreements. Hardin believes

courts must abandon their positions in favor of such agreements or allow plaintiffs the absolute right to appeal any decision of a private arbitrator.
{93} SUBJ MATTER: LABOR—GENERAL

Harter, Philip J. "Assessing the Assessors: The Actual Performance of Negotiated Rulemaking." New York University Environmental Law Journal; December 2000; 8(1): pp. 32-59.
The author takes the position that negotiated rulemaking serves as a tremendously successful means of developing agreements, particularly in the U.S. Federal Government agency setting. In his support of negotiated rulemaking, the author strongly attacks the research methods and analysis of Professor Coglianese who concluded that the process falls short of its goals. The author also explains the process of negotiated rulemaking, cites Congressional and Presidential support for it, and discusses examples of how agencies have used the process to reach a consensus on rulemaking.

Hartwell, Geoffrey M. Beresford. "Arbitration and the Sovereign Power." Journal of International Arbitration; April, 2000; 17(2): pp. 11-18.
This article questions whether arbitration is a derogation of sovereign power. Hartwell argues that it is not; indeed the states' power is instead a derogation of individual freedom, and arbitration is merely an exercise of individual freedom. Further, he maintains that the state's power is not invoked until a question becomes justiciable, and arbitration prevents the need for the state to become involved in disputes.
{92} SUBJ MATTER: INT'L
{147} POWER IMBALANCE

Hathaway, C. Michael. "Commentary on the "Appellate Body"." Law and Policy in International Business; Spring 2000; 31(3): pp. 697-700.
The Appellate Body of the WTO is already regarded as making wise and respected decisions. Many of the decisions have clarified dispute settlement procedure issues. The time has come to focus on the substantive issues facing the WTO. Although only five years old, the Appellate Body is already "pressed" for resources. Three possible solutions are to increase resources, increase the time allowed for determinations, or reduce the time spent on cases. Because of the widespread satisfaction with the Appellate Body, resource demands will be met and participation will continue.
{92} SUBJ MATTER: INT'L

Havins, Weldon E.; Dalessio, James. "Limiting the Scope of Arbitration Clauses in Medical Malpractice Disputes Arising in California." Capital University Law Review; Spring 2000; 28(2): pp. 331-358.
Havins traces the history and evolution of California's Medical Injury Compensation Reform Act (MICRA) of 1995, which established a mandatory arbitration requirement for medical malpractice disputes. Discussing the virtues of MICRA's underlying public policies, Havins criticizes recent California and federal appellate court decisions which threaten MICRA's goals by narrowing the scope of private arbitration provisions in medical service agreements. Havins believes that courts must uphold such agreements in order to stay consistent with the spirit of MICRA.
{98} SUBJ MATTER: MEDICAL MALPRACTICE

Haydock, Roger S. "Civil Justice and Dispute Resolution in the Twenty-First Century: Mediation and Arbitration Now and for the Future." William Mitchell Law Review; December 2000; 27(2): pp. 745-777.
Article makes the argument that if we embrace arbitration, mediation, and a reasonable litigations system, then our "fairy tale legal fantasy" will happily end with final, enforceable, and fair resolutions. The article further proposes that a well-drafted code of procedure implemented by a professional arbitrational organization will contain appropriate rules to govern arbitration, and the parties can decide not to make any additions or deletions from these rules.
{38} MED: NON-BINDING RECOMMENDATION PROC—GENERAL PROC—EARLY NEUTRAL EVAL
{21} MED: RELATED PROCESSES-GENERAL
{136} ECONOMIC ADVANTAGES OF ADR

Hecht, James C . "Operation of WTO Dispute Settlement Panels: Assessing Proposals for Reform." Law and Policy in International Business; Spring 2000; 31(3): pp. 657-663.
Author analyzes the WTO settlement panels. A primary concern is the ability of the panels to meaningfully enforce decisions. A criticism is the "rogue" panel disregarding applicable standards of review and judgments of national agencies and legislatures. To overcome these concerns author suggests panels must focus on compliance with their decisions and exercise restraint. Author focuses on reforms such as establishing a permanent body of panelists and making the system more open to the public.
{92} SUBJ MATTER: INT'L

Heilmann, Ronald W. "A Community-Based Parent Education Program For Separating Parents." Family and Conciliation Courts Review; October 2000; 38(4): pp. 514-527.
A program in Syracuse, N.Y. developed to educate parents that have separated to better care for their children includes teachers, nurses, therapists, day care workers, lawyers, judges, coaches, and clergy. The theory is that if all professionals from these groups continually remind parents to take better care of their children after a divorce, child neglect will go down.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)
{21} MED: RELATED PROCESSES-GENERAL
{134} DISPUTE PREVENTION

Hembra, John. "Treasury Report Stresses Confidentiality of PFAs (Internal Revenue Service Prefiling Agreements)." Tax Notes; October 2000; 89(2): pp. 189.
A Treasury report claims that the IRS should reject a proposal that would place an affirmative duty on the IRS to disclose all "official advice." The report says that confidentiality is essential to a fair and efficient tax system, and that because the proposed legislation does not clearly define "official advice" and imposes an affirmative duty on the IRS to release a multitude of privileged documents, it would create confusion.
{108} SUBJ MATTER: TAX

Herman, Gregg. "Divorce Settlement Negotiations." GP Solo & Small Firm Lawyer; October 2000; 17(7): pp. 34-38.
Discusses the process of divorce cases and handling negotiation settlements in these ongoing relationships. The author compares divorce negotiations to those of labor negotiations. The author then lists what he calls the "Ten Commandments of Domestic Negotiations" explaining what rules to follow when settling divorce disputes. He concludes by stating that there are exceptions to the rules but that if used they should create an atmosphere more conducive to settlement. The notion is that 90% of divorce cases settle and attorneys should be providing the best service to their clients by facilitating such settlements.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Hetherington, H. Lee; Frascogna, X. M., Jr. "The Ten-Minute Negotiator; Bargaining Basics for Busy Lawyers." GP Solo & Small Firm Lawyer; October 2000; 17(7): pp. 18-22.
The Author offers a foolproof strategy to negotiations for the busy lawyer. The Author refers to the negotiation as a "game" and proceeds to explain

how to play it. Points the author discusses are as follows: creating a floor and a ceiling; deal points, secondary points, and trade points; closing the deal; contingency planning; and leverage (uncertainty, time, opportunity and sanction).
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Hiatt, Jonathan P.; Becker, Craig. "Drift and Division on the Clinton NLRB." The Labor Lawyer; Summer 2000; 16(1): pp. 103-122.
The authors examine the decisions of the NLRB during the Clinton administration, concluding that "it reveals both a lack of consensus about the fundamental tenets of U.S. labor policy and the increasingly confined (indeed, relatively insignificant) doctrinal terrain on which the conflict over U.S. labor policy is enacted."
{93} SUBJ MATTER: LABOR—GENERAL
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

Ho, Victoria M.; Monaco, Daniel R.; Rosen, Janice S. "Parent Coordinators: An Effective New Tool in Resolving Parental Conflict in Divorce." Florida Bar Journal; June, 2000; 74(6): pp. 101.
A parent coordinator is a licensed mental health professional and a state-certified family law mediator. Parent coordinators are used in a divorce action to help minimize the conflict in visitation rights. From the perspectives of an attorney, judge, and a parent coordinator, the value of the service is immense to both the family and the courts. The article also gives a sample order for appointing a parent coordinator for the courts.
{21} MED: RELATED PROCESSES-GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)

Hoellering, Michael F. "Quo Vadis Arbitration? Sixty Years of Arbitration Practice. (Book Review)." Dispute Resolution Journal; May, 2000; 55(2): pp. 88.
Michael F. Hoellering reviews Professor Pieter Sanders' new book, *Quo Vadis Arbitration? Sixty Years of Arbitration Practice.* In his book, Sanders applies his vast experience to a grand compilation of international arbitration practices, some of which will be the topic at the forthcoming United Nations Commission on International Trade Law. Hoellering commends Sanders for the book's historical perspective on mediation and the effective use of mediation in modern society.
{92} SUBJ MATTER: INT'L
{125} COMPARISONS: HISTORICAL

Hoffman, Carol M. & Tenenbaum, Lawrence J. "Arbitrating Grievances Under School CBAs." New York Law Journal; October 2000; 224(69): pp. 1.
The Liverpool test is a two-part test to determine whether a public sector collective bargaining dispute is arbitrable. While the Court's holding in Liverpool questioned a perceived judicial presumption against public sector arbitrability, the Court of Appeals recently reaffirmed the Liverpool analysis, stripped of any presumptions. Additionally, the court requires a reasonable relationship between the subject matter of the dispute and the general provisions of the collective bargaining agreement.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Hoffman, David A.; Affolder, Natasha A. "Mediation and UPL; Do Mediators Have a Well-Founded Fear of Persecution?." GP Solo & Small Firm Lawyers; September 2000; 17(6): pp. 38.
Analysis of concerns of non-lawyer mediators for unlicensed practice of law liability. Argues for a new definition of UPL that clearly separates mediation from the practice of law. Summary of five factors used by courts to distinguish the practice of law from mediation. Calls for broad protection of mediators from UPL liability.
{138} ETHICS: GENERAL
{151} ROLE OF LAWYERS
{133} COURT REFORM

Horlick, Gary N.; Butterton, Glenn R. "A Problem of Process in WTO Jurisprudence: Identifying Disputed Issues in Panels and Consultations." Law and Policy in International Business; Spring 2000; 31(3): pp. 573-582.
Authors question how disputed issues are to be identified in the WTO dispute settlement system. Do all disputed issues need to be identified when making requests for consultations or panels? The Appellate Body recently stressed that parties must be fully forthcoming from the very beginning as to claims and facts. Many parties, however, may not know all of their claims at the early consultation stage. Authors fear that requiring parties to state all disputed issues at consultation will merge the consultation and panel processes causing a decline in pre-panel settlements.
{92} SUBJ MATTER: INT'L

Hou, Sunny Zhongmin. "Negotiation in China -- Stereotypes and Fallacies." Australasian Dispute Resolution Journal; August 2000; 11(3): pp. 163-173.
Article examines aspects of China-style negotiation and misunderstandings foreigners have about Chinese negotiation. The author focuses on various

characteristics of China-style negotiation such as Guan XI, Chinese style of expression and Chinese power and tactics. The author argues that it is important for foreigners to understand China-style negotiation as it is used in a modern context and to avoid stereotyping China-style negotiation based on features of traditional Chinese negotiation.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{92} SUBJ MATTER: INT'L

Hoy, Bridget Gentemen. "The Draft Uniform Mediation Act in Context: Can It Clear up the Clutter?." Saint Louis University Law Journal; Summer 2000; 44(3): pp. 1121-1153.
This comment examines the proposed Draft Uniform Mediation Act and whether the proposed act will help to alleviate the great variety of state laws dealing with mediation. The Draft Act would help to reduce the over 2000 specialized mediation regulations found throughout the states. Features of the Draft Act, including disclosure and the right to representation, are explained. Possible problems and critiques of the various sections of the Draft Act are discussed. One potential problem is the effect the Draft Act could have on private mediation.
{21} MED: RELATED PROCESSES-GENERAL

Hsu, Yuan-Ying. "The International Criminal Court: The Making of the Rome Statutes: Issues, Negotiation, Results (Book Review)." New York University Journal of International Law and Politics; Spring 2000; 32(3): pp. 845-848.
This book review provides a detailed breakdown of Roy S. Lee's book. The review explains that the book is a collection of writings on the legislative history and international impact of the Rome Statute, which set up the International Criminal Court. Because many of writers participated in the drafting of the statute, this review notes that Lee's compilation should be a useful reference tool in the international legal field.
{92} SUBJ MATTER: INT'L

Iacono, Paul M. "Choosing the Best ADR Process." For the Defense; July, 2000; 42(7): pp. 45-47.
Deciding upon the best ADR process depends upon the facts of the case and personality of those involved. First, the parties must decide if ADR is a legitimate consideration for the dispute. Once the parties choose mediation or a some hybrid of mediation and arbitration, they must select the mediator. This is a strategic choice requiring parties to select a mediator with a style

suited for the particular situation. Finally, the parties must consider their audience to select an effective advocacy style.
{21} MED: RELATED PROCESSES-GENERAL

Jaffe, James A. "Industrial Arbitration, Equity and Authority in England, 1800-1850." Law and History Review; Fall 2000; 18(3): pp. 525-558.
The author explores industrial arbitration in nineteenth century England. Author begins the analysis in the twelfth century and concludes in the mid-nineteenth century. Emphasis is placed on arbitration's claim to equity and various forms of voluntary arbitration.
{125} COMPARISONS: HISTORICAL
{93} SUBJ MATTER: LABOR—GENERAL

Jakoba, Raphael. "Comments on the New Malagasy Arbitration Act." Journal of International Arbitration; April, 2000; 17(2): pp. 95-99.
In the midst of liberalizing its economy, Madagascar has taken steps to modernize its legal environment. The adoption of law No. 98-019, a new arbitration regulation, will allow the Malagasy society to employ dispute resolution procedures in both domestic and international contexts. This article analyzes the risks of this new law, recognizing the inherent possibility that this law may lead to excessive judicial interventionism.
{92} SUBJ MATTER: INT'L
{144} LEGISLATION

Jegede, Ibilola; Dharmananda, Kanaga. "The Triumph of Expediency: Decisions by the UN Compensation Commission on Dates for the Accrual of Interest." Journal of International Arbitration; April, 2000; 17(2): pp. 31-39.
The United Nations Compensation Commission (UNCC) determines the period from which interest on compensable claims shall accrue. This article examines the process by which an appointed Panel of Commissioners makes this decision with respect to six different claim categories. Acknowledging that the UNCC has put forth tremendous effort with respect to resolving this issue, it's important to recognize that its task is not complete and that it still has a great deal of claims to review.
{74} SUBJ MATTER: GENERAL

Joyce, Robert P. "Employee Grievances and Appeals to the Local Board of Education." School Law Bulletin; Spring-Summer 2000; 31(3-Feb): pp. 34-40.
This article examines the scope of two North Carolina appeals statutes and the law regarding grievance procedures as it applies to boards of education.

Boards should structure their employee grievance procedures to allow for the appeals process required by statute. The author discusses the requirements of decision, notice, hearing by a panel of the board -- a change that allows an appeal to superior court for decisions other than just those involving character or the right to teach, and a new limitation for teacher appeals, instead of all school personnel.
{83} SUBJ MATTER: EDUCATION
{96} SUBJ MATTER: EMPLOYMENT (NON-UNIONS)
{128} REQUIREMENTS: STATUTORY OR RULES

Kanner, Gideon. "Redwoods, Junk Bonds, and Tools of the Cosa Nostra: A Visit to the Dark Side of the Headwaters Controversy." Environmental Law Reporter; September 2000; 30(9): pp. 10756-10770.
Discussion of the purchase of the Pacific Lumber Co.'s Headwaters Forest for its preservation as a national park by one of the lawyers representing Pacific Lumber. Author claims that the government tried to avoid the just compensation for a taking required by the Fifth Amendment, in part, because a junk-bond financier was associated with the lumber company and the high publicity campaign of militant environmentalist groups.
{84} SUBJ MATTER: ENVIRONMENT
{138} ETHICS: GENERAL

Kaplinsky, Alan S.; Levin, Mark J. "Consumer Financial Services Arbitration: A Panacea or a Pandora's Box?." The Business Lawyer; May, 2000; 55(3): pp. 1427.
The authors present a survey of Federal District Court and Federal Court of Appeals decisions concerning the enforceability of consumer arbitration clauses. These clauses are used by consumer financial services companies such as the issuers of American Express and Discover credit cards. The authors argue that although some courts have been hostile to these clauses, the majority of courts apply the Federal Arbitration Act standard, favoring the enforcement of arbitration agreements.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{76} SUBJ MATTER: COMMERCIAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Katz-Perlman, Sharon; Adelson, Jonathan S. "IRS Restructuring and Transfer Pricing Enforcement." Tax Notes; June, 2000; 87(10): pp. 1375-1384.
This article examines changes in transfer pricing enforcement wrought by the Internal Revenue Service Restructuring and Reform Act of 1998. The authors

opine that the availability of alternative dispute resolution in IRS appeals will compensate for increased contentiousness of the examination process. The authors conclude that taxpayers should take advantage of all dispute resolution tools offered by the IRS.
{108} SUBJ MATTER: TAX
{21} MED: RELATED PROCESSES-GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{146} ORGANIZATION POLICIES AND RULES
{144} LEGISLATION

Keil, James H. "Coaching Through Conflict." Dispute Resolution Journal; May, 2000; 55(2): pp. 65-69.
In this article, James Keil, a dispute management consultant, writes about how his company sets up conflict management processes using coaching techniques, specifically referring to a highly volatile situation at a public transportation authority repair garage. Keil concludes that using coaching strategies and facilitated discussions to implement management processes in each workplace can diffuse even the most difficult workplace conditions.
{96} SUBJ MATTER: EMPLOYMENT (NON-UNIONS)

Kenney, Patrick F. "The Mediation Privilege." Colorado Lawyer; November 2000; 29(11): pp. 66-73.
This article discusses confidentiality issues in mediation within the Colorado ADR system. The mediation privilege rests with the parties to the mediation and the mediator. The article examines the history and scope of the mediation privilege, as well as the exceptions to the mediation privilege. The author states that the mediation privilege is strong evidence from the Colorado State Legislature that there is a push for the increased use of mediation. This is especially true given the large increase in population in Colorado over the past few years. Moreover, the author suggests that the mediation privilege serves the legislative purpose of increasing mediation because it allows for frank discussions within the mediation procedure.
{21} MED: RELATED PROCESSES-GENERAL

King, Denise. "Internet Mediation -- A Summary." Australasian Dispute Resolution Journal; August 2000; 11(3): pp. 180-186.
Article examines the mediation process, comparing face-to-face mediation with Internet mediation. Author discusses advantages as well as potential drawbacks of utilizing an online mediation process. The author argues that online mediation is very beneficial and will significantly impact legal

processes in the future. Also, the article references various Internet sites that can be accessed for further information concerning online mediation.
{21} MED: RELATED PROCESSES-GENERAL

King, Robert L. "Effective Mediation Advocacy: Attorney for a Party Assumes at Least Three Distinctive Roles." New York Law Journal; April, 2000; 223(73): pp. S4.
Attorneys at mediation heaings act as advocates for the client, assist the mediator, and inform the client on how to maximize the benefits of the process. As advocates, the attorney must focus on the decision-maker. As assistants, the attorney must create an atmoshpere conducive to favorable settlement. As an informant for the client, the attorney must describe the limits and potential of the process.
{151} ROLE OF LAWYERS

Kingery, John. "Commentary: Operation of Dispute Settlement Panels." Law and Policy in International Business; Spring 2000; 31(3): pp. 665-673.
Author focuses on the benefit of establishing a permanent panel system within the WTO dispute resolution system. Author's proposed permanent panel would be geographically diverse and hear cases on a rotating basis, regardless of nationality. A permanent panel would aid in the consistency of decisions. Furthermore a standing panel would bring an end to long delays caused by the lengthy panel selection process.
{92} SUBJ MATTER: INT'L

Kingston, William. "The Case for Compulsory Arbitration: Empirical Evidence." European Intellectual Property Review; April, 2000; 22(4): pp. 154-158.
Recognizing that the costs of enforcing patent rights is a major problem for SMEs, the author argues the benefits of compulsory arbitration in such cases. He also points out the shortcomings of litigation: first that it favors the financially strong (large firms) with more resources; and second, that when time is essential to an SME's ability to maintain market interest, arbitration is more desirable than litigation.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{76} SUBJ MATTER: COMMERCIAL

Kirby, Ian. "Litigation: Can We Speak off the Record." Business Law Review; June, 2000; 25(3): pp. 157-159.
Negotiations eventually occur in the litigation process. The author states that there is a large need to speak "off the record" or "without prejudice" during

some of these negotiations so that the process moves along. He says that speaking off the record frees parties from the restrictions of litigation so that the truth will come out easier. The author then examines two cases involving the ramifications of speaking off the record including a scenario when one party attempts to use the discussion in court.
{38} MED: NON-BINDING RECOMMENDATION PROC—GENERAL PROC—EARLY NEUTRAL EVAL

Klipp, Melissa. "How to Fight Cyberpiracy." New Jersey Law Journal; August, 2000; 161(7): pp. 29.
To help resolve disputes over the use of internet company domain names, the World Intellectual Property Organization, via the Internet Corporation for Assigned Names and Numbers (ICANN), mandates that all domain names submit to resolve disputes using an international dispute resolution procedure. The procedure is streamlined for efficiency and is particularly effective in disputes involving intentional misuse and bad faith.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Koh, Pearlie M.C. "Enhancing Economic Co-operation: A Regional Arbitration Centre for ASEAN?." International and Comparative Law Quarterly; April, 2000; 49(2): pp. 390-412.
Koh argues that an independent arbitration centre for ASEAN disputes will provide the necessary legal order currently missing as ASEAN develops economic integration. This method, rather than a court of justice, for example, matches more closely the philosophy of these nations in settling disputes in non-adversarial ways while also meeting the needs of government and private entities at all levels to resolve problems.
{92} SUBJ MATTER: INT'L
{136} ECONOMIC ADVANTAGES OF ADR

Konsky, Sarah. "Police Impersonate Reporters in Ploy to End Hostage Crisis." News Media & the Law; Summer 2000; 24(3): pp. 12.
Police officers in Newark, N.J. represented themselves as media camera operators and reporters to gain entry to a house where a man held his nine-year old son hostage. The police confiscated a camera and the camera operator's credentials for use in the ruse. Commentators argue that police impersonation of newspersons places reporters at risk, by increasing suspicion among criminals that the newspersons are part of law enforcement rather than independent reporters.
{82} SUBJ MATTER: CRIMINAL
{102} SUBJ MATTER: PUBLIC POLICY

Koshiro, Kazutoshi. "Formal and Informal Aspects of Labor Dispute Resolution in Japan." Law & Policy; October 2000; 22(3-4): pp. 353-367.
In Japan a shift from collective dispute settlement to individual dispute resolution occurred in labor relations. The article explains how this phenomenon occurred, compares labor relations in the U.S. and Japan since the 80s, and discusses ADR options available in Japan such as local labor standards inspection offices, local women and minorities offices, joint-consultation prior to formal complaints, establishment of civil dispute mediation centers, and reorganization of labor relations committees to include individual disputes.
{93} SUBJ MATTER: LABOR—GENERAL
{92} SUBJ MATTER: INT'L

Kouretchian, Seyamack. "Web Development and Hosting; Beware: Improper Negotiation of Contracts for These Crucial Services is Dangerous." New York Law Journal; March, 2000; 223(58): pp. S6.
Web site hosting and development contracts are crucial to the success of a web site. These agreements, if not negotiated correctly can be dangerous. It is crucial that the attorney ensure that all legal and technical issues are addressed in these contracts because they define all of the operational and functional elements that make up a web site. This article also provides insight into the crucial areas for the attorney to cover in these type of agreements.
{151} ROLE OF LAWYERS
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Kovach, Kimberlee K. "Neonatology Life and Death Decisions: Can Mediation Help?." Capital University Law Review; Spring 2000; 28(2): pp. 251-292.
Kovach examines the potential benefits of using mediation in assisting the processes of making life and death decisions regarding neonatal births. After critiquing current decision-making methods in hospital neonatology intensive care units (NICUs), Kovach recommends using mediation in NICU decision-making in order to increase parties' overall satisfaction with decisions regarding neonates' survival and quality of life and to reduce much of the stress and emotional trauma involved with such decisions.
{98} SUBJ MATTER: MEDICAL MALPRACTICE

Kramer, Andrew M. "The Clinton Labor Board: Difficult Times for a Management Representative." The Labor Lawyer; Summer 2000; 16(1): pp. 75-102.

The author represents management clients before the National Labor Relations Board. Divisions among Board members on interpretation of the Act result in many split decisions. The Board's policies of becoming an active participant in major labor disputes, of filing unfair labor practice complaints against employers, and of seeking injunctive remedies brought much criticism from Congress and the management bar. Management sees the willingness of the Board to challenge and overturn precedent as troublesome. Topics include employee free choice, right of an employer to use economic weapons, and technological innovation in the workplace.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{87} SUBJ MATTER: GOV'T
{146} ORGANIZATION POLICIES AND RULES

Krivis, Jeffrey. "From Conflict to Resolution; When to Negotiate the Litigated Case." GP Solo & Small Firm Lawyer; October 2000; 17(7): pp. 28-33.
The author explains when is the best time to discuss settlement from the time the case is filed until the eve of the trial. The author discusses factors for getting the other side to the table and dealing with competitive negotiators. Then the author concludes with a case example. The key is timing and to know when is the right time to bring up settlement negotiations.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Kyle, Rodney C. "Some Analytical Jurisprudence on Canadian Arbitration Law." Dispute Resolution Journal; August 2000; 55(3): pp. 24-30.
The author utilizes W. N. Hohfeld's system of legal analysis to analyze the rules of Canadian arbitration law by raising varying policy questions such as the power of the court to set aside an arbitral award and staying court proceedings. The author considers Ontario's Arbitration Act, the International Commercial Arbitration Act and the federal Commercial Arbitration Act.
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Laffie, Leslie S. "The Arbitration Alternative." Journal of Accountancy; June, 2000; 189(6): pp. 86.
The IRS two year pilot program allows taxpayers to request binding arbitration for unresolved factual issues that are already in the appeals office administrative process. The request for arbitration must come after the taxpayer and the appeals office try to negotiate a settlement. The parties must

agree to be bound by the arbitrator's agreement and not to appeal. CPA's will play an important role in advising clients on the benefits and possible hazards of participating in the program.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{87} SUBJ MATTER: GOV'T
{108} SUBJ MATTER: TAX

Laflin, Maureen E. "Can Informed Consent Preserve the Integrity of Mediation?." Advocate (Idaho); November 2000; 43(11): pp. 12.
Because mediation works on two principles of self-determination and mediator impartiality, a neutral needs to be careful when evaluating the parties' positions. While evaluative or directive mediation is not necessarily bad, the parties to the mediation need to know the type of mediation that they are going to be involved. This article evaluates Virginia's newly adopted Rules of Professional Conduct for lawyers that act as third party neutrals.
{21} MED: RELATED PROCESSES-GENERAL
{138} ETHICS: GENERAL

Lancken, Stephen. "The Preliminary Conference: Option or Necessity?." Australasian Dispute Resolution Journal; August 2000; 11(3): pp. 196-203.
Article analyzes the use of preliminary conferences in mediation programs by examining the rationales for and against preliminary conferences. Author describes different types of preliminary meetings and the objectives to be achieved by engaging in the mediation process. Author believes that experienced mediators should not be confined to a process model; rather they should develop a procedure that is comfortable and will meet the needs and interests of the parties.
{21} MED: RELATED PROCESSES-GENERAL

Lauchli, Urs Martin. "Cross-cultural Negotiations, with a Special Focus on ADR with the Chinese." William Mitchell Law Review; Fall 2000; 4(26): pp. 1045-1073.
The author identifies many of the challenges presented by cross-cultural negotiations between the Chinese and foreigners, including that the Chinese frequently rely on non-legal norms. After examining the historical, economic, political and legal background of alternative dispute resoultion in China, the author discusses the practical aspects of cross-cultural negotiations with the Chinese.
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Lavelle, Keren. "Olympic Sports Case Decides Athletes Are Not Chattels." Law Society Journal; November 2000; 38(10): pp. 16-17.
The article summarizes the arbitration proceedings relative to the dispute between the International Olympic Committee and athlete Angel Perez. The Court of Arbitration in Sport (CAS) was used to arbitrate the dispute. The article suggests that the CAS will be used more frequently, because it is well-funded, employs credentialed arbitrators, and allows for uniformity in decisions.
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Leahy, Edward R.; Bianchi, Carlos J.,. "The Changing Face of International Arbitration." Journal of International Arbitration; August 2000; 17(4): pp. 19-61.
Authors address a range of issues regarding developments in the field of international commercial arbitration. Highlighting the "globalization" of the world's economy the authors discuss developments in international arbitration ranging from jurisdiction to arbitrability to judicial review of arbitration awards. In addressing these developments, the authors also look to the expansion of western regimes in developing states and advocate that the evolution of international arbitration is due to the positive result of international arbitration becoming truly international.
{92} SUBJ MATTER: INT'L
{74} SUBJ MATTER: GENERAL

Leahy, William B.; Rubin, Karen E. "What You Say (and Don't Say) in ADR." For the Defense; July, 2000; 42(7): pp. 48-51.
Although there are ethical rules that provide an overview of attorney conduct, the cases interpreting these rules give only partial guidance. However, case law has established that mediators are to be treated as clothed in judicial garb, and advocate's conduct toward mediators is the equivalent of conduct directed to a judge. Therefore, courts have vacated settlements where ADR has been tainted by lack of candor toward the mediator or opposing counsel. Lack of candor may include failure to disclose all material facts and any conduct that could be characterized as a misrepresentation.
{139} ETHICS: MISREPRESENTATION, FAILURE TO DISCLOSE

Lederman, Leandra. "Late Returns Claiming Refunds: Negotiating the 'Fantastic Labrynth'." Tax Notes; November 2000; 89(8): pp. 1053-1061.
This article examines the need for clarifying the correct manner of applying statutes of limitations on refund claims to delinquent tax returns. Suggested

reforms included a uniform three-year limitations period, application of the "mailbox rule" to late-arriving claims, and limitations on due date extensions.
{108} SUBJ MATTER: TAX

Lemon, Christopher. "Government in the Woods: The Carrier Lumber Case." The Advocate; January 2001; 59(1): pp. 85.
Article discusses the many concerns have been raised over what impact treaty settlements are going to have on the forest sector industry of British Columbia. Furthermore, the article primarily makes the argument that after the decision of the Supreme Court of British Columbia in *Carrier Lumber Ltd. v. Her Majesty the Queen in Right of the Province of British Columbia*, one must question whether British Columbians should continue to entrust the important task of representing third-party interests at treaty negotiations to government representatives.
{87} SUBJ MATTER: GOV'T

Lenefsky, David. "Take a Lesson From Beethoven." New York Law Journal; May, 2000; 223(95): pp. 2.
Beethoven commenced an action to be granted sole custody of his nephew. Although it was 185 years ago, he and the other parties involved made many of the mistakes people are still making. He was a poor witness, made unfounded and false claims, tried to use politics and status to his advantage and made and broke family alliances. The lesson to be learned is "stay out of court."
{125} COMPARISONS: HISTORICAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL..)

Levy, Charles S. "Implementing TRIPS -- A Test of Political Will." Law an Policy in International Business; Spring 2000; 31(3): pp. 789.
This article examines the implementation of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) as it pertains to developing countries. The significant non-compliance by developing countries with TRIPS poses a problem to the WTO system itself. The author contends that drafters of TRIPS relied too heavily on litigation as a fallback tool for achieving compliance. The author suggests that developing countries need the "political will" to implement the difficult responsibilities mandated by TRIPS. Also, the author stresses the need for selective litigation, whereby only those cases are heard that will establish a legal precedent broad enough for other countries to follow.
{92} SUBJ MATTER: INT'L

Lew, Darryl S. "Court Review of Arbitral Awards Limited: Parties' Agreements that Provide for More are Unenforceable Under Federal Statute." New York Law Journal; August, 2000; 224(35): pp. S5.
Article focuses on the fact that prompted by the desire to provide a means to avoid (and void) the occasional aberrant arbitral award, some parties have begun to include in their arbitration agreements provisions for judicial review of the merits of the award. Looking at both the Federal Arbitration Act as well as the FAA's judicial interpretation, the article concludes that allowing judicial review of arbitration awards, because such review would fundamentally alter the nature of arbitration and the courts' role the arbitral process under the FAA, should be up to Congress, not the courts.
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Lew, Darryl S. "Expanding Arbitral Review Improper?." New York Law Journal; October 2000; 224(83): pp. s6.
This article examines whether it is proper to increase judicial review of arbitral awards. The author directs the reader to a recent Second Circuit case which stated that federal subject matter jurisdiction exists whenever a party claims in good faith that an arbitral award was handed down in manifest disregard of the law. The potential increase in judicial review of arbitration awards is incorrect because the standard handed down by the Second Circuit is not found in the Federal Aribitration Act.
{104} SUBJ MATTER: REGULATORY
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Liebman, Wilma B.; Hurtgen, Peter J. "The Clinton Board(s) -- a Partial Look from Within." The Labor Lawyer; Summer 2000; 16(1): pp. 43-74.
There were eight National Labor Relations Boards during the Clinton presidency. The differing make up of each board influenced the case processing, decisionmaking and administration. Challenges contributing to delay and case backlogs included the following: high turnover, appointment and confirmation difficulties, budget cutbacks, increasingly complex cases, and novel workplace issues. The author discusses changes in traditional collective bargaining relationships caused by globalized markets, technological innovation, deregulation, competitive pressures, and workplace diversity. The article discusses cases that illustrate those challenges.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{146} ORGANIZATION POLICIES AND RULES
{125} COMPARISONS: HISTORICAL

Litchman, Lori. "Abuse of Peer Review Process May Lead to Bad Faith Claim." The Pennsylvania Law Weekly; March, 2000; 23(13): pp. 5.
This article details a recent Pennsylvania Court decision, *Hladinec v. Nationwide Insurance Co.*, PICS Case No. 00-0374 (C.P. Fayette Feb. 8, 2000), which allowed a plaintiff's bad faith claim to proceed against an insurer. Plaintiff had alleged as part of a breach of contract suit that the insurer had acted in bad faith by choosing a peer review organization that it knew would provide a negative report. The judge in this case also ruled that arbitrators have jurisdiction to hear bad faith claims.
{91} SUBJ MATTER: INSURANCE

Litchman, Lori. "Superior Court Says UIM Arbitration Can Precede Third-Party Trial." Pennsylvania Law Weekly; June, 2000; 23(23): pp. 3.
The Pennsylvania Superior Court says that an insurer is not prejudiced by an arbitration panel's refusal to postpone a hearing to determine underinsured motorist benefits when a related third-party action has not been resolved. In Providence Washington Insurance Co. in *Harper v. Providence Washington Ins. Co.*, the unanimous court said that Providence was not providing gap coverage, but was credited for any tortfeasor liability. Therefore, it was not prejudiced by the panel not postponing the hearing.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{91} SUBJ MATTER: INSURANCE
{114} 3D PARTY: PRACTICE OF LAW

Litchman, Lori. "High Court: Docket Entry of Notice Start Arbitration Appeal Period." Pennsylvania Law Weekly; April, 2000; 23(14): pp. 7.
The Supreme Court of Pennsylvania ruled that the thirty-day time period for appealing an arbitration begins when the entry of notice of the award is placed in the docket, not from the date of the award. The court followed Pennsylvania Rule of Civil Procedure 108(b).
{74} SUBJ MATTER: GENERAL

Litchman, Lori. "Arbitrator Is to Decide Who Can Demand Arbitration." Pennsylvania Law Weekly; May, 2000; 23(22): pp. 7.
A common law arbitration decision said a 27 year old man, who lived with his parents, but was not driving a vehicle listed on their insurance policy was a "covered person" under the policy and could therefore recover underinsured motorist benefits. The Pennsylvania Supreme Court, in *Borgia v. Prudential Insurance Co.*, a split decision, ruled that the question of whether he was a "covered person" could be decided in the arbitration

because the arbitration clause was ambiguous and therefore must be read against the drafter, the insurance company.
{91} SUBJ MATTER: INSURANCE

Loomis, Tamara. "High Court Agenda: Many Key Business Cases Share the Docket." New York Law Journal; September 2000; 224(62): pp. 5.
The author gives an overview of the many business-related cases on the Supreme Court's docket for its new term. Notably, the Court will look at three arbitration cases. They will decide if a mandatory arbitration agreement in a mortgage agreement is enforceable, whether an arbitration award reinstating an employee who tested positive for drugs is enforceable in court, and if the Federal Arbitration Act applies to employment contracts.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Loritz, Daniel R. "Corporate Predators Attack Environmental Regulations: It's Time to Abitrate Claims Filed Under NAFTA's Chapter 11." Loyola of Los Angeles International and Comparative Law Review; August 2000; 22(4): pp. 533-51.
Author addresses the use of NAFTA's Chapter 11 as a means for corporations to extort compensation payments from member nations. This article focuses on the history of foreign direct investment in Mexico, the predecessor to NAFTA's Chapter 11 the Bilateral Investment Treaty. It also provides an overview of Chapter 11 basics while also discussing international law as applied to government regulations, illustrates a Chapter 11 controversy, examines the legal solutions to the Chapter 11 problem currently advanced by legal scholars, and advocates that member nations should take advantage of arbitration rather than settle Chapter 11 claims.
{92} SUBJ MATTER: INT'L
{84} SUBJ MATTER: ENVIRONMENT

Lovell, Sandy. "Arbitration Agreement Must State Employee is Waiving Right to Sue." New Jersey Law Journal; May, 2000; 160(6): pp. 6.
Under the general Cannon of Contract law in New Jersey, "an employer cannot require an employee to forfeit statutory rights as a condition of employment." Accordingly, an employer is prohibited from compelling arbitration of labor disputes absent a clear understanding by the employee that he or she has waived his or her right to sue.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Lovell, Sandy. "Fired Public Defender is entitled to Arbitration Hearing." New Jersey Law Journal; April, 2000; 160(2): pp. 6.

A fired Public Defender will be able to appeal his termination in an arbitration hearing. Unclassified employees with over six years service are entitled to arbitration of terminations based upon poor performance or misconduct. The original termination was neutral in an attempt to avoid arbitration, but the employee alleges that the termination was for chronic tardiness.
{93} SUBJ MATTER: LABOR—GENERAL

Lozier, James E. "Revolution of Our Civil Justice System." For the Defense; July, 2000; 42(7): pp. 44.
Faciliated mediation has revolutionized our justice system by saving costs, time, and personnel resources. While it is not possible to resolve every case with facilitated mediation, even unsuccessful attempts serve the valuable purpose of better preparing parties to try the lawsuit. Attorneys can enhance their reputations if they become effective mediation advocates while maintaining their courtroom trial skills. To achieve success in mediation, the attorney must develop a plan that includes selecting the best mediator, a written understanding of the mediation process, and an outline of the client's position that preserves the opportunity to negotiate an agreement.
{21} MED: RELATED PROCESSES-GENERAL

Lustig, Mitchell S. "Inter-Company Uninsured Motorist Arbitration." New York Law Journal; November 2000; 224(95): pp. 1.
This article discusses inter-company Uninsured Motorist Arbitration forum, its purposes, scope of its jurisdiction, and procedural requirements of participating insurers. The inter-company forum can be a useful means of dispute resolution, but many insurers do not know about it.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{91} SUBJ MATTER: INSURANCE

Macaulay, Mark L. "Adjudication: Rough Justice? Adjudication Provisions in the United Kingdom's Housing Grants, Construction and Regeneration Act of 1996." Scots Law Times; September 2000; 28: pp. 217-219.
Author examines the Human Rights Act of 1998 to determine if the dispute resolution mechanisms in the adjudication provisions of the Housing Grants, Construction and Regeneration Act of 1996 are still legal. Adjudication has provided a speedy process before an impartial tribunal. However, the Construction Act falls short of providing the same protections as the Human Rights Act, such as guaranteeing a fair and public hearing, an independent tribunal, and a public judgment. The author concludes that, absent a

voluntary or court-prescribed legislative amendment, the construction industry will have a virtually useless adjudication scheme.
{80} SUBJ MATTER: CONSTRUCTION
{92} SUBJ MATTER: INT'L

Macy, James R. "Negotiating Union Labor Contracts on Behalf of School Districts and Municipalities." GP Solo & Small Firm Lawyer; October 2000; 17(7): pp. 44.
The article discusses the fundamentals of successfully negotiating for school districts and other municipalities. Author stresses the importance of preparation and what the effective negotiator will do to be adequately prepared. An outline of the bargaining process is provided with a series of questions that must be answered to establish ground rules for negotiations.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{83} SUBJ MATTER: EDUCATION
{88} SUBJ MATTER: GOV'T CONTRACTS

Mahony, P.D. "Private Settlement - Public Justice?." Victoria Unitersity of Wellington Law Review; April, 2000; 31(1): pp. 225-230.
This article explores the pros and cons of "court-annexed" or court-sanctioned mediation services. This article supports the use of fully serviced court-based mediation systems because it affords access to justice and opens the court's doors to those who do not have the financial means to afford full litigation and those who feel alienated by the adversary system.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Makin, Chris. "ADR: An Expert Accountant's View." Solicitors Journal (Summer 2000 Expert Witness Supplement); August 2000; 144(30): pp. S30.
The author explains how civil justice reform has worked to encourage greater use of alternative dispute resolution processes in the United Kingdom. The author suggests that a chartered accountant can prove useful by acting as an arbitrator, valuer, mediator, or expert determiner.
{133} COURT REFORM

Manley, Mark. "Mediation in Libel Cases?." Solicitors Journal; March, 2000; 144(11): pp. 268.
Mediation provides a feasible solution in libel cases, and may have unexpected benefits. By raising issues that concern the parties, but are not raised in the adversarial atmosphere, both sides are more likely to get what they want and address factors that are more important to them than damages.

Advantages of mediation in the libel context include working out an apology, lowering costs, and diminishing uncertainty, among others.
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Marlow, Lenard. "Samson and Delilah in Divorce Mediation." Family and Conciliation Courts Review; April, 2000; 38(2): pp. 224-233.
This article innovatively uses the biblical tale of Samson and Delilah to discuss the power dynamic present in divorce mediations. The author suggests that men and women are each powerful in different ways; therefore the outcome of a divorce mediation is not predictable. The article recharacterizes the parties in a divorce mediation as people rather than gender specific men and women.
{147} POWER IMBALANCE

Marquess, Kate. "Point, Click -- Settle Quick! Online Negotiations Hailed for Efficiency, But Some Prefer Face to Face." ABA Journal; April, 2000; 86: pp. 82.
The author discusses the creation of Cybersettle, an Internet venue which allows attorneys to process "final offer" bids to the court. The reviews of the attorneys are mixed. Some say that it is easy and forces them to "get real" about settlement offers. Others say that the human touch is needed and if it will not work in person, there is no reason to think it will work online.
{21} MED: RELATED PROCESSES-GENERAL
{121} SETTLEMENT: AUTHORITY

Martin, Jay G. "Checklist for Drafting Arbitration Clauses in International Commercial Contracts." Corporate Counsel's Quarterly; October 2000; 16(4): pp. 65-75.
The author of this article discusses several key issues, which attorneys should take into consideration when drafting international arbitration clauses or agreements. Additionally, the text of the article corresponds with a Model Arbitration Provision, which is provided by the author in Appendix A of the Article.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Mashkour, Moshkan. "Building a Friendly Environment for International Arbitration in Iran." Journal of International Arbitration; April, 2000; 17(2): pp. 79-83.

For years Iran has actively participated in arbitration proceedings, yet it continues to play a minor role in overseeing international arbitrations. Recently, however, Iranian jurists have engaged in immense efforts to create a friendly environment for international arbitration in Iran. These efforts have included the development of the Tehran Regional Arbitration Centre, the establishment of new arbitration law applicable to international commercial disputes, and the ratification of existing conventions.
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Matthews-Giba, F. "Religious Dimensions of Mediation." Fordham Urban Law Journal; June, 2000; 27(5): pp. 1695-1710.
The author explores the historical religious foundations of mediation, emphasizing the role of the Franciscan movement and religion's influence on mediation in the United States. A value-based approach may allow parties to reframe their disputes and identify their common interests. Values may be found in commonly-held societal beliefs or in religion. The author provides three scenarios where such a value-based approach may assist the parties in mediation.
{21} MED: RELATED PROCESSES-GENERAL
{125} COMPARISONS: HISTORICAL

Mayer, Jeffrey J.; Seitz, Theodore W. "Recognizing and Understanding Consent Issues in Arbitration." Michigan Bar Journal; May, 2000; 79(5): pp. 504-509.
This article analyzes the issue of consent in arbitration procedures, recognizing consent as an often overlooked issue in arbitration litigation. In addition, it looks at the relationship between "fictitious consent," the fairness of arbitration proceedings, and the remedy given by arbitration clauses. The authors seek to draw attention to the issue of consent for both drafters of arbitration clauses and attorneys who litigate cases arising out of arbitration clauses.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

McCloskey, Michael. "Problems with Using Collaboration to Shape Environmental Public Policy." Valparaiso University Law Review; Spring 2000; 34(2): pp. 423-434.
The author examines the emergence of collaboration in shaping public policy. Criticism is directed against the blind use collaboration without consideration of such factors as distribution of power, principles of

democracy, First Amendment rights, and timing. When the collaborative process which relies on consensus rules becomes something more than advisory, overriding problems often appear. The author offers an alternative approach.
{102} SUBJ MATTER: PUBLIC POLICY
{104} SUBJ MATTER: REGULATORY

McDowell, Amy. "Drafting An Enforecable Mandatory Arbitration Agreement In The Employment Setting." The Practical Lawyer; December 2000; 46(8): pp. 39.
This article provides employers with a roadmap for drafting enforceable arbitration agreements in light of the recent *Armendariz v. Foundation Health Psychcare Services, Inc.* decision by the California Supreme Court. As a result of the decision, employers may ask employees to sign pre-dispute abitration clauses on a "take-it-or-leave-it" basis, but there are restrictions. The author suggests ways to avoid the pitfalls that caused the court to declare the arbitration agreement in Armendariz to be un-conscionable and unenforcebale. The tips explain, in part, that the employer should not limit employee remedies or discovery, nor a court's review of the decision. Additionally, employers should pay the arbitrator's fees.
{93} SUBJ MATTER: LABOR—GENERAL

McElroy, Donna K. "Compulsory Arbitration Agreements . . . Issues Concerning the Enforcement of Compulsory Arbitration Agreement Between Employers and Employees." St. Mary's Law Journal; Summer 2000; 4(31): pp. 1015-1038.
Since 1970, there has been a dramatic increase in employment litigation. Litigation is costly, and thus, the increase in employee claims and litigation has prompted employers to consider ways to reduce, or avoid altogether, litigation time and costs. The author argues that one option for employers, in order to avoid expensive and time-intensive litigation, is to enter into binding arbitration agreements with employees. The author also identifies the positives and negatives associated with arbitrating an employee claim, ultimately concluding that arbitration is an efficient alternative to traditional litigation. After analyzing governing legal precedent, the author provides guidelines for crafting an enforceable binding arbitration agreement.
{94} SUBJ MATTER: LABOR—DISCRIMINATION
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{136} ECONOMIC ADVANTAGES OF ADR

McGown, John, Jr. "Tax Thoughts: Resolving State and Federal Tax Disputes by Using Alternative Dispute Resolution." Advocate (Idaho); November 2000; 43(11): pp. 17.
The Tax Thoughts column focuses on alternative dispute resolution. The first part discusses the different options open to practitioners to resolve tax disputes with government at both the state and federal levels. It also describes steps that the IRS has taken in their mediation program. The Tax Forum focuses on items of specific interest to attorneys who practice in Idaho in the areas of tax, probate, and trust law.
{108} SUBJ MATTER: TAX

McMillan, Daniel D. "An Owner's Guide to Avoiding the Pitfalls of Disputes Review Boards on Transportation Related Projects." Transportation Law Journal; Spring 2000; 27(2): pp. 181-203.
The author gives an overview of the Disputes Review Board (DRB) model as it has developed in conjunction with large transportation construction projects. A discussion of the attributes and shortcomings of this ADR tool is followed with suggestions for improvement on how to avoid pitfalls in the process.
{80} SUBJ MATTER: CONSTRUCTION

McNally, James N. "Lessons Learned in the Court of Appeals Settlement Program." Michigan Bar Journal; May, 2000; 79(5): pp. 488-493.
This article, written by the settlement director for the Michigan Court of Appeals Experimental Settlement Program, provides an overview of the program and its history. It describes how cases are selected, the procedure during the conferences, and what occurs if a case does or does not settle. The author determines that the program has benefitted both the court and the litigants involved.
{21} MED: RELATED PROCESSES-GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES

Miller, Clinton E. "The Proper Protocol for Working with Claims Adjusters." GP Solo & Small Firm Lawyer; October 2000; 17(7): pp. 48.
This article explains how lawyers' settlement success rate with adjusters will increase by following simple protocols. It stresses making the adjusters' job easier by packaging and presenting the settlement. Outlining the claim is suggested as a means of clearly and accurately depicting the claim.
{91} SUBJ MATTER: INSURANCE

Mo, John. "Determining the Validity of Arbitration Agreements by Chinese Courts and Aritration Commissions." Australasian Dispute Resolution Journal; November 2000; 11(4): pp. 228-36.
The author provides an overview of the validity of arbitration agreements under the Arbitration Law of the People's Republic of China and judicial interpretations of that law issued by the National Supreme Court of China. The author suggests that parties intending to enforce an arbitration agreement should first seek judicial declaration that the arbitration agreement is valid under the Arbitration Law.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{124} COMPARISONS: CROSS-CULTURAL

Mungiolo, Marcus. "The Manifest Disregard of the Law Standard: A Vehicle for Modernization of the Federal Arbitration Act." St. Mary's Law Journal; Summer 2000; 4(31): pp. 1079-1122.
There is currently much ambiguity regarding the judicial review of arbitration awards. The author focuses on the manifest disregard of the law standard, and analyzes its interpreation in the United States Courts of Appeals. Next, the author identifies the grounds for vacating an arbitration award under the Federal Arbitration Act (FAA), and compares it to the non-statutory "manifest disregard of the law" standard. Finally, the author suggests doing away with the uncertainty surrounding application of the manifest disregard standard by integrating the manifest disregard standard into the FAA.
{74} SUBJ MATTER: GENERAL
{144} LEGISLATION

Muyanja, Jimmy M.; Chomi, Stephen. "Issues in Arbitration of Claims Against Third World States: A Case Study of the Government of Uganda." Journal of International Arbitration; August 2000; 17(4): pp. 77-96.
A case study of the rules relating to arbitration in Uganda from the time disputes arise up to the execution of the award. The authors begin with a discussion regarding the general rules of arbitration in Uganda and then focus specifically on claims against the government. The article concludes by finding that arbitration is the preferred method of obtaining redress from the Ugandan government as opposed to litigation and that practitioners must be aware of the technicalities that may impede the enforcement of arbitral awards.
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{87} SUBJ MATTER: GOV'T

Myers, Fiona; Wasoff, Fran. "Meeting in the Middle: Mediators' and Solicitors' Divorce Practice." Scots Law Times; October 2000; 33: pp. 259-265.
This article centers around the use of dispute resolution in the family law context. The article's main premise is that while dispute resolution has become a preferrable way to deal with problems in the family law context, this method of resolution is inadequately understood by the parties involved. The article uses studies conducted by the authors to conclude that the parties in a family law matter cannot be partisan, including the mediator because the interests of the child must surpass those of either parent.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{21} MED: RELATED PROCESSES-GENERAL

Nallin, Judith. "U.S. Third Circuit Arbitration -- Class Actions -- Electronic Transfers -- Truth in Lending." New Jersey Law Journal; October 2000; 162(1): pp. 61.
Discussing the Third Circuit's decision in *Johnson v. West Suburban Bank*, which illustrates that there are some tensions between the purposes of arbitration and the Truth-in-Lending Act and the Electronic Fund Transfer Act. Nonetheless, the article explains that these tensions do not preclude arbitration in that context.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{76} SUBJ MATTER: COMMERCIAL
{79} SUBJ MATTER: CONSUMER

Neeseman, Carroll E. "Ending Expansion of Judicial Review of ADR Awards." New York Law Journal; November 2000; 224(99): pp. 1.
The Second Circuit has consistently held that arbitration awards are subjected only to limited judicial review in order to preserve the purposes of arbitration: settling disputes efficiently and avoiding prolonged litigation. However, a recent New York Southern District Court vacated an arbitration award applying the standard of "manifest disregard of the evidence." This standard was adopted in *Halligan v. Piper Jaffray* a case dealing with discrimination, and is applied only when the arbitrator knew of and deliberately ignored the legal standard in a case where the law would easily be applied. While the Second Circuit has accepted the use of this standard in discrimination cases, the recent *Daily News v. Newspaper & Mail Deliverers' Union of New York* was a wage dispute and this opened the possibility of widening judicial review of arbitration awards. However, subsequent Southern District Court cases have followed the traditional rule,

and the Daily News case was settled before appeal to the Second Circuit, one term of the settlement being that the district court vacate their decision. Hence what was thought to be an expansion of arbitration review has been ended.

Nelson, Ray. "Setting Up A Mediation Practice." GP Solo & Small Firm Lawyer; October 2000; 17(7): pp. 51.
Author shares his experience of attempting to shift his litigation practice to mediation over the course of four years. He suggests that interested attorneys shouldn't neglect their core practice when venturing into mediation, but they should move slowly into the field. He advises to get good training before venturing into the field and to get one's name out among potential clients.
{21} MED: RELATED PROCESSES-GENERAL

Newman, Lawrence W. "Disputes with Foreign States." New York Law Journal; October 2000; 224(83): pp. 3.
This article deals with the use of arbitration as a means to resolve diputes with foreign states. The author surmises that as the use of ADR to resolve disputes with foreign nations increases, those who are sympathetic to host nation concerns may diminish those concerns to the extent that knowledge of the arbitral awards are better known. Moreover, the author argues that investors who have grown accustomed to using ADR will deal only with those nations who employ such practices. Finally, the author argues that equitable or other considerations can be dealt with through contractual provisions.
{92} SUBJ MATTER: INT'L
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Newman, Todd A. "A Suggested Approach to Applying the National Mediation Board's Railroad Merger Procedures." The Labor Lawyer; Winter-Spring 2000; 15(3): pp. 483-507.
Newman traces the history and background of the National Mediation Board's (NMB) 1989 Railroad Merger Procedures (RMPs), which were designed to resolve union representative disputes when two independent railroads merge. Because asset acquisition was neither within the RMPs' definition of merger nor does it give rise to union conflict, Newman believes that the NMB's decision to extend RMPs to asset acquisitions by non-carriers sets a dangerous precedent. Newman believes RMPs should be reserved only for railroad merger disputes.
{93} SUBJ MATTER: LABOR—GENERAL

Newman, Tracy Blitz. "Broadly Worded Arbitration Clause Governs Tort Claim against Architect." Pennsylvania Law Weekly; April, 2000; 23(16): pp. 8.
The Pennsylvania Superior court voiced a strong policy favoring arbitration when it held that a contractual arbitration clause should be expanded to include a tort claim.
{110} SUBJ MATTER: OTHER TORTS

Newmark, Christopher; Green, David. "Human Rights, Arbitration, and ADR." (United Kingdom) Solicitors Journal; December 2000; 144(45): pp. 1094.
Authors Christopher Newmark and David Green explore the impact of the Human Rights Act of 1998 on various ADR methods. The effect of the HRA on ADR is still unclear, but many issues will soon come forth. For example, the authors note that section 6 of the HRA requires that all "public authorities" (including courts and tribunals) must act consistently with the HRA. Thus, the question is raised whether arbitrators or mediators would fall under the act. The HRA defines "public authorities" as a body performing a public function and not a private function. The authors argue that while this has not been resolved, it is likely that arbitrators and mediators would be viewed as private bodies thus not subject to the HRA. The authors also point out that the European Convention on Human Rights (ECHR) has distinguished between voluntary and mandatory arbitration, whereby parties who voluntarily enter into arbitration will not be affected by the HRA, while those compulsory arbitrations may fall under the guise of the HRA. With respect to the courts (clearly within the HRA), the authors ask whether the HRA will influence the decision of the courts to vacate an arbitral awards which they have the power to do if there is a "serious irregularity."
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{138} ETHICS: GENERAL

Ney, Peter H. "The Internet Offers Alternative Dispute Resolution Options." Colorado Lawyer; May, 2000; 29(5): pp. 75-76.
This article advocates the advantages of settling disputes online via web-based ADR services. A brief description is given to explain the process, and websites providing services are listed. The article highlights online advantages, particularly the economic and confidential benefits that may be derived.
{136} ECONOMIC ADVANTAGES OF ADR

Nicolai, Paul Peter. "A Tale of a Mass Claims Panelist." Corporate Counsel; June, 2000; 7(6): pp. A3-A4.
The author notes the procedural and substantive differences between traditional mediation and arbitration, and mass claims mediation and arbitration. Mass claims are unique in that they are referred to mediation or arbitration only after a settlement. They can include hundreds of claims. Among the procedural differences noted between traditional and mass claims dispute resolution are the reliance on specialized rules in mass claims mediation.
{74} SUBJ MATTER: GENERAL

Nicolai, Paul Peter. "Understanding Mass Claims Panels." Dispute Resolution Journal; May, 2000; 55(2): pp. 24-30.
This article is an overview of the substantive and procedural differences between handling mass claims panel cases and traditional court-referred cases. Nicolai points out that administrative agencies are increasing individual reviewer caseloads for mass claims panels, and suggests that the process can remain timely by streamlining the process through technology. Technology use allows higher efficiency, enabling the cost of the technology to be spread over more cases and preserving profitability.
{114} 3D PARTY: PRACTICE OF LAW
{110} SUBJ MATTER: OTHER TORTS

O'Melveny, Mary K. "Negotiating the Minefields: Selected Issues for Labor Unions Addressing Sexual Harassment Complaints by Represented Employees." The Labor Lawyer; Winter-Spring 2000; 15(3): pp. 321-355.
Labor unions encounter sexual harassment cases where the accuser, the accused, or both are members of the union. This article examines legal issues such as the unions' duty of fair representation and Title VII claims. The article consists of a survey of sexual harassment claims involving labor unions. It concludes by suggesting several practical solutions that could help unions better deal with sexual harassment issues.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

O'Melveny, Mary K. "Negotiating the Minefields; Labor Unions Address Sexual Harassment Complaints." GP Solo & Small Firm Lawyers; September 2000; 17(6): pp. 52.
The standards required for a fair hearing are different for Title VII claims than they are for other harassment claims. The union may become liable for a violation if the victim can show that the union failed do address a complaint and that the failure was gender-based. Harassment of one union worker by

another union worker who has some control of the victim's daily activity may be considered harassment by the employer.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{146} ORGANIZATION POLICIES AND RULES

Oppenheimer, Martin J., Fullerton, John F., III. "The Role of the Union in the Arbitration of Statutory Employment Claims." Dispute Resolution Journal; May, 2000; 55(2): pp. 70-78.
Martin Oppenheimer and John Fullerton, both labor and employment law attorneys in New York City, give a pro-arbitration opinion on the precedent and public policy surrounding the enforcement of pre-dispute arbitration agreements between employers and labor organizations, examining the dynamics between the leading cases in this area. The authors predict that the Supreme Court will choose to enforce such agreements just as soon as the question arises before them.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{102} SUBJ MATTER: PUBLIC POLICY
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Ortner, Sally; Shields, Merrill. "Colorado Now Has Model Standards of Conduct for Mediators." Colorado Lawyer; June, 2000; 29(6): pp. 45-50.
This article discusses statewide requirements for the conduct of mediators developed in Colorado and endorsed by many organizations, including the Colorado Bar Association. These standards developed due to the increased awareness over the issue of establishing formal qualifications for persons engaged in ADR. The article discusses the different ways to establish the qualifications such as licensure and then explains the Colorado standards in depth. These standards are impartiality, competency, confidentiality, truth, and compensation. Finally, the article ends by stating that formal implementation of the standards is on-going.
{21} MED: RELATED PROCESSES-GENERAL

Panel Discussion. "Civil Rights Law in Transition: The Forty-Fifth Anniversary of the New York City Commission on Human Rights." Fordham Urban Law Journal; April, 2000; 27(4): pp. 1112-1130.
This panel discussion focused on mediation practices that occur in New York State at the New York City Commission on Human Rights, the New York State Division of Human Rights, and the U.S. Equal Opportunity Employment Commission. The panel discussed how the three agencies interact to perform mediations, as well as the interworkings of mediations at each of the agencies.

{87} SUBJ MATTER: GOV'T

Parenti, Gail Leverett. "The Bells of St. Mary's: Tolling the End of Voluntary Binding Arbitration of Medical Malpractice Claims." Trial Advocate Quarterly; Fall 2000; 19(4): pp. 8-14.
Arguing that voluntary binding arbitration promotes the early settlement of medical malpractice claims, and is, therefore, an effective means of achieving the purpose of Florida's 1988 Medical Malpractice Act. Parenti criticises the Florida Supreme Court's ruling in *St. Mary's Hospital, Inc. v. Phillipe* because it will decrease the number of cases in which voluntary binding arbitration will be a viable option. Parenti calls on the Florida Legislature to reverse the effects of that decision and reaffirm the potency of voluntary binding arbitration in medical malpractice cases.
{98} SUBJ MATTER: MEDICAL MALPRACTICE

Parlin, Christopher. "Operation of Consultations, Deterrence, and Mediation." Law and Policy in International Business; Spring 2000; 31(3): pp. 565.
The World Trade Organization's consultation process has bumps, but Members' proposals for change will make the dispute settlement mechanism run more smoothly. Prompt settlement of disputes between Members is essential for the WTO; consultation through good offices, conciliation, and mediation provide such a remedy. These methods of alternative dispute resolution have proved successful in the past, but with Members' suggested improvements, it will run much better in the future.
{92} SUBJ MATTER: INT'L

Pfaff, Dennis. "Trade Winds: Former Secretary of State Christopher to Arbitrate NAFTA Dispute." California Lawyer; September 2000; 20(9): pp. 25-26.
Warren Chrisopher was appointed to a three-member panel to arbitrate a nearly $1 billion claim being made against the U.S. government by a Canadian Company known as Methanex. The claim arose out of a decision made by Governor Davis to phase out the additive MTBE from all gasoline sold in the state over the next two years. Methanex is a major producer of MTBE and sought to utilize the Chapter 11 provision of NAFTA.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{114} 3D PARTY: PRACTICE OF LAW
{84} SUBJ MATTER: ENVIRONMENT
{144} LEGISLATION

Piotrowicz, Rysard. "The Australia/New Zealand -Japan Fisheries Dispute: Tuna Back on the Menu." Australian Law Journal; October 2000; 74(10): pp. 650-653.
Arbitral Tribunal found that it lacked jurisdiction to hear the case, although a long decision was written. In essence it is a defeat for Australia and New Zealand. The matter before the Tribunal had been a dispute over how much SBT Japan should be allowed to catch and how differences in this matter should be settled. The Tribunal found that Japan was covered by the mandate of the Commission for the Conservation of SBT and did not agree to referral to the Tribunal which means it lacks jurisdiction.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Polley, Gin E.; Cullari, Francine. "Peer Mediation in the Classroom; a New Initiative for the State Bar of Michigan." Michigan Bar Journal; September 2000; 79(9): pp. 1192.
Discussion of a peer mediation program in elementary and middle schools to resolve conflicts peacefully. The student mediators are trained by members of the Michigan bar.
{83} SUBJ MATTER: EDUCATION
{151} ROLE OF LAWYERS

Ponte, Lucille M. "Reassessing the Australian Adversarial System: An Overview of Issues in Court Reform and Federal ADR Practice in the Land Down Under." Syracuse Journal of International Law and Commerce; Summer 2000; 27(2): pp. 335-361.
Despite their differences, the U.S. and Australian legal systems share many of the same obstacles to justice including exorbitant legal fees and overcrowded dockets. Australia has recently established the Australian Law Reform Commission (ALRC) in order to evaluate the need for extensive reform in the country's adversarial system. Ponte summarizes the ALRC, which encourages increased relaince on Alternative Dispute Resolution as a means of ensuring better access to justice for individual citizens.
{92} SUBJ MATTER: INT'L
{133} COURT REFORM

Posthuma, Richard A.; Dworkin, James B.; Swift, Maris Stella. "Arbitrator Acceptability: Does Justice Matter?." Industrial Relations; April, 2000; 39(2): pp. 313-335.
This article is an examination of the acceptability of arbitrators in labor management disputes. This article approaches the topic from both a case study and theoretical model perspective through an examination of field data

and a discussion of procedural and interactional justice. In its conclusion, the authors find that arbitrators utlizing procedural and interactional justice are more acceptable and that the dispute resolution process used is an important context factor in labor management disputes.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)

Quinn, Michael Sean. "The Defending Liability Insurer's Duty to Settle; A Mediation Upon Some First Principles." Tort & Insurance Law Journal; Summer 2000; 33(4): pp. 929-993.
Liability carriers with a duty to defend are themselves responsible for damages if they irrationally or irresponsibly fail or refuse to settle covered claims within policy limits and thereby expose their policy-holders to excess damages. The definition of "irresponsible" and "irrational" differ from jurisdiction to jurisdiction. The author explores several points of view on the duty that defending liability insurers have to settle cases: philosophical, public policy, economic, principled, doctrinal, prudential, and practical.
{91} SUBJ MATTER: INSURANCE

Ragosta, John A. "Unmasking the WTO: Access to the DSB System: Can the WTO DSB Live up to the Moniker "World Trade Court"?." Law an Policy in International Business; Spring 2000; 31(3): pp. 739.
The Dispute Settlement Body (DSB) of the WTO has been praised as the single most important development in the post-World War II trading regime, and is commonly referred to as a "world court" for trade. This article examines two fundamental areas of reform that will be needed for the DSB to truly act as a "world court": substance and procedure. First, there needs to be a means of providing appropriate substantive guidance in areas where clarity is lacking. Second, procedural protections are needed, such as improved access for real parties in interest, more weight given to amicus briefs, more involvement by private counsel in dispute settlement proceedings, and more effective analysis on the decisions issued.
{92} SUBJ MATTER: INT'L

Raines, Susan Summers. "ADR Program Checklist: What Government Agencies Need to Know." Dispute Resolution Journal; August 2000; 55(3): pp. 66.
ADR is a growing phenomenon and state and local agencies are beginning to notice. Prompted by ADR successes in other areas, agencies are anxious to experience the benefits of ADR as well. Agencies often fail to make use of what other agencies and organizations have done, however, so Susan

Summers Raines offers this checklist to ease the process and make programs work.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Rainone, Sebastian M.; Frank, Alan L. "Arbitration: How to Draft the Agreement and Use the Forum." The Practical Lawyer; April, 2000; 46(3): pp. 45-52.
This article presents a general review of the advantages of arbitration in light of the explosion of both litigation and arbitration in the past few years. The central focus is tailoring the arbitration to the client's needs and circumstances. Finally, the article provides a practioner's checklist for items to consider when arbitration may be a possibility.
{151} ROLE OF LAWYERS

Randolph, Paul. "Scepticism about Mediation." New Law Journal; April, 2000; 150(6932): pp. 565.
Paul Randolph, a London attorney and lecturer, editorializes that UK lawyers, particularly personal injury lawyers, are allowing their misconceptions about mediation prevent its widespread use in the UK. Randolph argues that mediation is a superior method of resolution in personal injury cases, and that personal injury lawyers must embrace mediation training and techniques, or non-lawyer mediators will begin to encroach on the legal profession.
{21} MED: RELATED PROCESSES-GENERAL
{92} SUBJ MATTER: INT'L
{151} ROLE OF LAWYERS

Rangaswami, Viji. "Operation of the Appellate Process and Functions, Including the Appellate Body." Law and Policy in International Business; Spring 2000; 31(3): pp. 701.
This article addresses the first five-year Congressional review of U.S. participation in the World Trade Organization (WTO). One area to be examined by Congress will be the operation of the Dispute Settlement Understanding (DSU). The article examines whether the DSU promotes both confidence in the WTO system, and whether it leads to the prompt resolution of disputes.
{92} SUBJ MATTER: INT'L

Reardon, Roy L.; McGarry, Mary Elizabeth. "Court Addresses Champerty, Arbitration and Medicaid Planning." New York Law Journal; July, 2000; 224(8): pp. 3.

The New York Court of Appeals has recently issued several significant decisions involving the following issues: applying the champerty statute to sophisticated financial transactions; resolving two issues of first impression concerning the CPLR arbitration tolling provision; reiterating that reliance is not an element of a consumer fraud private cause of action; addressing Medicaid residence and guardianship issues; and permitting a disparity in judicial pay between counties.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{76} SUBJ MATTER: COMMERCIAL
{79} SUBJ MATTER: CONSUMER

Redfern, Michael. "Capturing the Magic --The Analytical Factor." Australasian Dispute Resolution Journal; November 2000; 11(4): pp. 254-61.
The author discusses the decision-making process in mediation. The author states that it is critical that mediators help the parties fully understand the options available to them to help the parties make invididualized decisions. Personal accounts are provided as examples.
{21} MED: RELATED PROCESSES-GENERAL
{151} ROLE OF LAWYERS

Reichert, Jennifer L. "California High Court Lowers Boom on Mandatory Arbitration Agreements." Trial; October 2000; 36(10): pp. 83-84.
A review of the California Supreme Courts decision, *Armendariz v. Foundation Health Psychcare Services, Inc.*, that placed restrictions on employers who require new employees to sign mandatory arbitration clauses as a condition of employment.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNIONS)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Reiner, Andreas. "Some Recent Austrian Court Decisions in the Field of Arbitration." Journal of International Arbitration; April, 2000; 17(2): pp. 85-90.
This article examines recent Austrian court decisions in the area of international arbitration. The decisions explore a myriad of issues, including the enforcement of arbitration awards set aside in their country of origin, challenges to the arbitral tribunal's jurisdiction, and the arbitrability of disputes arising between a limited liability company and its shareholders as well as disputes among shareholders.
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Reuben, Richard C. "Strictly in Confidence. (California Mediation Confidentiality Law)." California Lawyer; September 2000; 20(9): pp. 31-32.
Discussion regarding the second District Court of Appeals decision, *Foxgate Homeowners' Association v. Bramalea California*, that required a mediator to turn over information on a mediation to a judge who later used it as a basis for assessing sanctions against one of the parties. This was the third decision which rejected the legislative limitations on testimony about mediation communications. The resulting concern was that mediators could threaten to turn over mediation proceedings to a judge as a mediation tactic.
{21} MED: RELATED PROCESSES-GENERAL
{132} CONFIDENTIALITY
{138} ETHICS: GENERAL

Reuben, Richard C. "Strictly in Confidence?(Confidentiality in Mediation Practice)." Advocate (Idaho); November 2000; 43(11): pp. 9.
A conflict between the promise of confidentiality and the interests of the courts to have all relevant evidence known has arisen. To solve this problem the National Conference of Commissioners on Uniform State Laws and the American Bar Association (ABA) are drafting a Uniform Mediation Act. It will include a confidentiality privilege that is similar to the attorney client privilege. This article is written by the Reporter for the ABA Drafting Committee and describes how the Act was developed.
{21} MED: RELATED PROCESSES-GENERAL
{132} CONFIDENTIALITY
{138} ETHICS: GENERAL

Reuben, Richard C. "Mixed Blessings (California Supreme Court Decisions on Mandatory Arbitration)." California Lawyer; December 2000; 20(12): pp. 27-28.
The California Supreme Court recently tackled the issue of mandatory aribitration in the employment industry in *Armendariz v. Foundation Health Psychcare Services*. The decision struck down a mandatory arbitration employment provision as fundamentally unfair because it applied only to the employees and not the employer, and it precluded arbitrators from awarding punitive damages. While the author notes that the decision is "progress", such that employees are now being more protected and the employers seeking to use mandatory arbitration can now do so with more legal guidance, there is still the problem of getting to court to assert the protection. The court may receive numerous amicus briefs, but the question remains as to which the courts will likely read. The article suggests that the best way to

have the brief read to try to get protection from the court is to have either an important public official sign it or have an attorney with a trackrecord of novel viewpoints sign it. Finally, the author suggests that parties could just try to bombard the court with briefs in such a way that they can not ignore the matter.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Reuben, Richard C. "Picking Up the Tab." California Lawyer; July, 2000; 20(7): pp. 27-28.
This fall the Supreme Court will review *Green Tree Financial Corp. v. Randolph*, a case in which the Eleventh Circuit held an arbitration agreement to be unenforceable because the provision did not indicate that the company would pay the cost of forum fees. Forum fees include all costs associated with arbitration such as the arbitrator's fees and room rental. Forum fees are a point of contention when arbitration is mandatory since having the dispute resolved in the traditional court room setting may cost the employee or consumer considerably less.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Riccardi, Michael A. "Strict Review Given to Award in Arbitration." New York Law Journal; August, 2000; 224(37): pp. 1.
Article examines the Queens Supreme Court case of *Tel-A-Car of New York v. Providence Washington Insurance Co.* in which it was held that the premature submission of a dispute to mandatory arbitration will not be treated differently from other compulsory arbitration filings. The article also explained that while a mandatory arbitration award may be set aside where the award is arbitrary or capricious, a voluntary arbitration award will only be set aside if it is the product of fraud, corruption or other misconduct.
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Riccardi, Michael A. "Police Take-Home Pay Rule Subject to Negotiation." New York Law Journal; May, 2000; 223(92): pp. 2.
New York Supreme Court upheld the right of police captains and lieutenants to negotiate with the city about the procedures used to equalize take-home pay between officers living in the city and those living in the suburbs.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Riccardi, Michael A. "Power to Appoint Guardian Lacking in Stock Arbitration." New York Law Journal; May, 2000; 223(101): pp. 1.
A Queens judge ruled that the NY Supreme Court does not have jurisdiction to appoint a guardian ad litem in an arbitration before the NY Stock

Exchange. The lawyer for the defendant sought a guardian for his client, a "John Doe" who is a former stock broker accused of making unauthorized transactions. He has been diagnosed with Bipolar Mood Disorder but the same psychiatrist said he is capable of managing his affairs. The court found no grounds for allowing the guardian.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Riccardi, Michael A. "Arbitration Award Vacated on Fee Issue." New York Law Journal; March, 2000; 223(53): pp. 1.
Justice Moskowitz of the Manhattan Supreme Court set aside a $600,000 contractual arbitration award because of "improper conduct" by the arbitrator. The arbitrator, Robert Goldstein, asked for advance payments for expenses, and then sent the parties invoices during the arbitration process. The "appearance of impropriety and the potential for bias" arose because one party did not comply with Mr. Goldstein's demands while the other party did comply.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Richards, Christopher. "Who Says Mediation Is a Minority Choice." Family Law; April, 2000; 30: pp. 282-283.
Article focuses on a lawyer's interaction with a client who is seeking to utilize a mediator to facilitate her divorce. The author discusses the trends associated with "second parties" who tend not to respond to requests to meet with a mediator, as opposed to "first parties" who readily respond to the idea of mediation. The entire discussion occurs under the context of section 29 of the Family Law Act of 1996.
{21} MED: RELATED PROCESSES-GENERAL

Richards, Christopher. "Drink, Drugs, Divorce and Mediation." Family Law; May, 2000; 30(5): pp. 364-365.
This article stresses the need for greater discussion on the effects of substance abuse upon mediation efforts between spouses. Author encourages mediators to factor in the effect of substance abuse problems when seeking resolution to disputes.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Richardson, Maggie. "Clinton Writes Rosty's Name on List of Pardons." Tax Notes; January 2001; 90(1): pp. 15-17.
Article gives a report about the granting of a pardon by President Clinton to former House Ways and Means Committee Chair Dan Rostenkowski. The article gives a brief description of the events leading up to Rostenkowski's

guilty plea on the charge of mail fraud, as well as the likely reasons that President Clinton felt that he deserved a pardon.
{108} SUBJ MATTER: TAX

Rivkin, Victoria. "Septuagenarian Graduates from Cardozo; Looks Ahead to Promoting Mediation." New York Law Journal; June, 2000; 223(111): pp. 1.
This article reports the story of Michael Pope, a 76-year-old engineer who recently earned his law degree. Mr. Pope went to law school to improve his understanding of the law as an expert witness in construction disputes. He hopes to bring mediation to the construction industry because it is faster and less expensive, and produces less animosity than litigation.
{80} SUBJ MATTER: CONSTRUCTION
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{136} ECONOMIC ADVANTAGES OF ADR
{21} MED: RELATED PROCESSES-GENERAL

Robinson, Bert K. & Landreneau, Kevin P. "Tension Between Arbitration and Judicial Review." Louisiana Bar Journal; October 2000; 48(3): pp. 241.
Discussion of the general premise that there is no judicial review of an arbitration award and the possible exceptions to that credence under Louisiana law. Discussion of Louisiana courts' willingness to consider whether arbitration awards were made when the arbitrator exercises a manifest disregard for the law explored. Author suggests there may be ways around the bar to judicial review of arbitration awards under Louisiana law.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Rock, David. "A First-Hand Look at Mediation with the Service: How to Make the Most of It." Journal of Taxation; August, 2000; 93(2): pp. 69-72.
In 1995, the IRS began a pilot mediation program to resolve disputes. The author of this article participated in this mediation program. From his encounter, mediation produced favorable results when compared to trial, including less time, less cost, less risk, a preview of how litigation might turn out, and an atmosphere conducive to settlement. Based on his findings, the author recommends that practitioners follow in the IRS's footsteps.
{21} MED: RELATED PROCESSES-GENERAL

Rogers, R. Michael; Palmer, John P. "A Speaking Analysis of ADR Legislation for the Divorce Neutral." St. Mary's Law Journal; Summer 2000; 4(31): pp. 871-947.
The article provides the Texas arbitrator or mediator with an analysis of the Texas Alternative Dispute Resolution Act as it relates to the family law area.

Additionally, the analysis explores how family dispute arbitration or mediation in Texas is affected by the Texas Family Code. Throughout the article, the author provides practice observations and practical advice to the arbitrator or mediator arbitrating a family dispute under Texas law.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Rohlik, Josef. "Arbitrators Should Write Opinions for Parties and for Courts." Saint Louis University Law Journal; Summer 2000; 44(3): pp. 933-948.
As its title suggests, this Article presents reasons why arbitrators should write opinions stating the precise issues involved in their decisions, and what issues were not involved in their decisionmaking. The author's focus is on arbitration opinions in the commercial and labor settings. Three arbitration case studies are presented and examined from the perspective of a reviewing court. The author writes that arbitration opinions in statutory rights claims are beneficial and desirable.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{76} SUBJ MATTER: COMMERCIAL
{93} SUBJ MATTER: LABOR—GENERAL

Rojas, Warren. "FSC Repeal Slides Under the Wire; Congress Skips Town Yet Again." Tax Notes; November 2000; 89(8): pp. 983-985.
This article discusses President Clinton's signing of the "FSC Repeal and Extraterrirtorial Income Exclusion Act of 2000." The World Trade Organization had found the United States' foreign sales corporation tax provisions to be in violaton of a WTO agreement. Enactment of the bill avoided a trade confrontation with the European Union.
{108} SUBJ MATTER: TAX

Rosenthal, Jeffrey A. "The Yashin Arbitration: Ending Hockey Holdouts?." New York Law Journal; July, 2000; 224(9): pp. 1.
Recently, in a potentially precedent-setting move, the Ottawas Senators of the National Hockey League (NHL) filed and won an arbitration proceeding claiming that the contract of their biggest star, Alexi Yashin, was tolled while he withheld his services for the entire 1999-2000 season. The arbitrator ruled that Mr. Yashin had to perform one more year of services for the Senators, despite the fact that his contract would have expired in June 2000.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNIONS)

Rosenthal, Paul C.; Vermylen, Robert T.C. "The WTO Antidumping and Subsidies Agreements: Did the United States Achieve Its Objectives During the Uruguay Round?." Law an Policy in International Business; Spring 2000; 31(3): pp. 871.
This article provides a review of the United States' negotiating objectives during the Uruguay Round negotiations pertaining to the Antidumping Agreement and the Subsidies and Countervailing Measures Agreement (SCM Agreement). The author analyzes two WTO decisions that have directly challenged the U.S. in its administration of its antidumping and countervailing duty laws. The author also addresses the question of whether the U.S. has maintained effective antidumping and countervailing duty laws, concluding it has. Finally, the author discusses the issue of renewing subsidies categories that permit otherwise violative subsidies for certain activities.
{92} SUBJ MATTER: INT'L

Rosentstein, James A. "Using Mediation Techniques to Rescue Endangered Negotiations." The Practical Lawyer; September 2000; 46(6): pp. 37-48.
The question posed is what should be the role of the attorney when a proposed solution seems feasible but the other party and their attorney is rejecting the mediation proposals? Situtations such as these call for "agreement facilitation" where an impartial intermediary (the "agreement facilitator") helps the parties efficiently and effectively negotiate their agreement using many of the same tools that a mediator applies in helping parties resolve their disputes.
{21} MED: RELATED PROCESSES-GENERAL
{151} ROLE OF LAWYERS
{123} SETTLEMENT: PRESSURE TO SETTLE

Rubin, Barbara M.; Stewart, Kyle. "Department Tips: Negotiating Television Deals with Business Affairs Executives: for Lawyers Who Represent Artists, Some Dos and Don'ts from the Other Side." Los Angeles Lawyer; April, 2000; 23(2): pp. 16-20.
The article describes how a lawyer should negotiate with a business affairs executive. It is a behind the scenes account of the factors that shape business executives' decisions. The executive receives information from the artist's agent or laywer which then becomes the cornerstone of subsequent negotiations to the drawing up of the long contract. Particular emphasis is on the compensation provisions and credit and the profit provisions of the contract.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Rubin, Richard C. "Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice." UCLA Law Review; April, 2000; 47(4): pp. 949-1104.
The central issue of this article focuses on constitutional issues associated with alternative dispute resolution. The author is concerned with integrating minimal due process standards into dispute resolution hearings where state action is present. Finally, the author seeks to adopt a unitary theory of alternative dispute resolution systems for both public and private hearings.
{74} SUBJ MATTER: GENERAL

Rubins, Noah. "Time Limits for Confirmation of Arbitral Awards in United States Courts." Dispute Resolution Journal; August 2000; 55(3): pp. 40-47.
This article explores the conflicting interpretations by the courts with regard to the time limits for confirming arbitration awards under the Federal Arbitration Act. This article also discusses the time limits for confirming such awards under the Uniform Arbitration Act, New York's Civil Practice Law and Rules, and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Sacks, Robert N. "Mediation: An Effective Method to Resolve Estate and Trust Disputes." RIA Estate Planning Journal; June, 2000; 27(5): pp. 210-213.
Due to the increase in estate and trust litigation, mediation is being used to resolve disagreements. This article describes how mediation is used in these fields and the best ways for practitioners to advise their clients about the process. The articles also talks about how mediation can be the most practical approach to solving estate and trust conflicts.
{21} MED: RELATED PROCESSES-GENERAL

Saigo, Holly. "Agricultural Biotechnology and the Negotiation of the Biosafety Protocol." Georgetown Internatinal Environmental Law Review; Spring 2000; 12(3): pp. 779-816.
This article provides an overview of issues surrounding biotechnological advances in agriculture in recent years, and the efforts to implement an international Protocol on Biosafety. The author develops the need for establishing a protocol to insure that advances are pursued, but at the same time attendant risks are discovered and addressed.

{86} SUBJ MATTER: FARM
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Salman, Robert R.; Salman, Suzanne A. "Litigation Prevention: Things You Can Do in Drafting and Negotiating." Bench & Bar of Minnesota; April, 2000; 57(4): pp. 29-31.
This article focuses, in general, on problems associated with drafting contracts and the potential pitfalls to avoid when using "boilerplate" language. With regard to arbitration, the article notes the widespread use of such clauses in contracts and also that parties may arbitrate at any time regardless of such a provision in the contract.
{151} ROLE OF LAWYERS

Samahon, Tuan N. "TRIPS Copyright Dispute Settlement after the Transition and Moratorium: Nonviolation and Situation Complaints Against Developing Countries." Law and Policy in International Business; Spring 2000; 31(3): pp. 1051-1075.
The five-year transition period and moratorium on intellectual property law enforcement in developing countries has expired. This note discusses how inadequate enforcement of intellectual property law, particularly copyrights, will now be actionable before the WTO's dispute settlement body. Such topics as violation complaints, nonviolation complaints, and situation complaints are covered. The note also examines possible enforcement problems and potential remedies.
{92} SUBJ MATTER: INT'L

Sandburg, Brenda. "Arbitration System for Domain Names Appears a Success." New York Law Journal; October 2000; 224(76): pp. 5.
Sandburg examines the success of Internet Corporation for Assigned Names and Numbers (ICANN), a system for arbitrating copyright disputes over domain names. She concludes that generally it is a success, and notes the speed and inexpensive nature, but points out the many criticisms and problems the ICANN has encountered, such as inconsistent decisions. Creating an appellate process or tightening the rules that govern the arbitrators are suggested remedies.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Savage, David G. "Opening Closed Doors? 9th Circuit Rules Federal Arbitration Act Doesn't Apply to Employment." ABA Journal; November 2000; 86: pp. 32.

The Circuit City Stores v. Adams case looks at whether a company can bind employees to mandatory arbitration clauses in the employment contract The Supreme Court decision will decide the correct interpretation of the FAA and decide whether it applies to employment disputes. If the court finds that it does, it will reverse the Ninth Circuit which is the only circuit that has held that binding arbitration agreements in employment disputes are valid.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNIONS)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Scarborough, Robert H. "NYSBA Tax Section Suggests Changes to Arbitration Program." Tax Notes; May, 2000; 87(6): pp. 847-849.
The author offers comments and recommendations to improve arbitration procedure with respect to disputes between taxpayers and the Internal Revenue Service.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Schlam, Stanley S.; Stone, Harvey M. "Arbitration Waiver, Preclusion of Defense Testimony, Double Jeopardy." New York Law Journal; June, 2000; 223(111): pp. 3.
This article discusses recent decisions of the U.S. District Court for the Eastern District of New York involving the following issues: arbitration waiver, defense testimony preclusion, double jeopardy, and the Copyright Act.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{133} COURT REFORM

Schoenfield, Mark K. "The Hidden (Philosophical) Traps in Mediation and Arbitration." The Practical Lawyer; October 2000; 46(7): pp. 13-19.
ADR professionals bring to the dispute-resolving forum their own unique philosophies about goals, procedures, and protocol. These things can be outcome-determinative. As a result, one should keep in mind these philosophical issues when choosing an arbitrator.
{21} MED: RELATED PROCESSES-GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{138} ETHICS: GENERAL

Schulte, Christopher J. "The New Anticybersquatting Law and Uniform Dispute Resolution Policy for Domain Names." Tort & Insurance Law Journal; Fall 2000; 36(1): pp. 101-118.

The Anticybersquatting Consumer Protection Act gives an in rem, or statutory damages, action against cybersquatters upon a showing of bad faith. The Uniform Domain Name Dispute Resolution Policy was devised to arbitrate the practice of profiteering in domain names by those who register a name and then try to sell it back to its rightful owner. The arbitrator can cancel or transfer the domain name. The author urges that the bad-faith requirement should not be relaxed or the reach of anticybersquatting initiatives will be overextended to include claims for relief that are unwarranted attempts to gain exclusive control of a trademark formerly shared by others.
{144} LEGISLATION
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Shalakany, Amr A. "Arbitration and the Third World: A Plea for Reassessing Bias under the Specter of Neoliberalism." Harvard International Law Journal; Spring 2000; 41(2): pp. 419-468.
The author examines the history of Third World critiques of arbitration, particularly in what the author describes as North-South disputes. This article discusses the interrelationship between arbitration and political, cultural, religious, and economic factors existing in any international dispute. How these relationships weigh in the perception of bias is analyzed in the context of arbitration awards.
{92} SUBJ MATTER: INT'L

Sheppard, Doug. "Rise of the Streamline Project; Fall of the Advisory Commission." Tax Notes; January 2001; 90(1): pp. 40-46.
Article discusses the downfall of the Advisory Commission on Electronic Commerce (ACEC), an organization that virtually monopolized multistage tax discussions for the first four months of 2000. The Article further discusses the rise of the state-led Streamlined Sales Tax Project. The article concludes that the near future will see other forms of state action.
{108} SUBJ MATTER: TAX

Sheppard, Doug. "Final E-Com Meeting Short on Proposals, Long on Negotiations." Tax Notes; April, 2000; 87(1): pp. 37-41.
The Federal Advisory Commission on Electronic Commerce (ACEC) lacked requisite consensus over the "business caucus proposal -- not taxing goods ordered through the internet while taxing the same goods if they were ordered in the conventional way. The Internet Tax Freedom Act (which created the Commission) requires that a finding or recommendation receive a

two-thirds vote to be included in the Congressional report while other content would only require a majority vote.
{108} SUBJ MATTER: TAX
{104} SUBJ MATTER: REGULATORY

Sheppard, Doug. "Talks Begin on Internet Bill for 107th Congress." Tax Notes; December 2000; 89(13): pp. 1689-1690.
State and Congressional representatives held meetings on the disparity between the Streamlined Sales Tax Project (SSTP) and Senator Byron Dorgan's internet sales tax bill. Although both bills provides for establishment of a multistate sales tax compact to both collect sales and use taxes on out-of-state purchases and lessen the compliance burden on vendors, they differ on how this result is reached.
{108} SUBJ MATTER: TAX
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Sher, Barry G. "Old Questions for the New Economy: Which is Better, Litigation or Binding Arbitration, for Resolving Commercial Disputes?." New York Law Journal; August, 2000; 224(35): pp. S4.
Article focuses on the problem often faced when entering into a contract whether a party should insist, in the form of a mandatory arbitration clause, to go to arbitration should a dispute arise. Before choosing between litigation and arbitration, it is important for a party to assess the likelihood that it will end up as a defendant or plaintiff if a dispute arises.
{136} ECONOMIC ADVANTAGES OF ADR

Shirzad, Faryar. "The WTO Dispute Settlement System: Prospects for Reform." Law an Policy in International Business; Spring 2000; 31(3): pp. 769.
This article examines whether the WTO Dispute Settlement System has been a success in its operation, and whether reforms are needed. The author concludes that, in general, the system has been a success, nevertheless, important procedural reforms are still needed. The author suggests that there should be improved public access to dispute settlement proceedings, including copies of the participating parties' briefs, and that there should be appropriate procedural limits on the amicus briefs that are filed.
{92} SUBJ MATTER: INT'L

Shoyer, Andrew W.; Solovy, Eric M. "The Process and Procedure of Litigating at the World Trade Organization: A Review of the Work of the

Appellate Body." Law and Policy in International Business; Spring 2000; 31(3): pp. 677-697.
Authors provide an overview of the first five years of the Appellate Body. Much of the Appellate Body's decisions have addressed procedural issues including the use of expert opinions and amicus briefs, the appropriate burden of proof at the panel level, and the panel's fact finding duties. Authors determine, however, that many of the addressed issues still need to be clarified. Authors note remaining weaknesses to the system such as the Appellate Body's inability to remand, and its growing workload.
{92} SUBJ MATTER: INT'L

Siderman, Marcela Noemi. "Compulsory Arbitration Agreements Worth Saving: Reforming Arbitration to Accommodate Title VII Protections." UCLA Law Review; August 2000; 47(6): pp. 1885-1924.
This article discusses compulsory arbitration for civil rights violations within the employment context. Author advocates for the continued use of compulsory arbitration agreements so long as additional safeguards are implemented to protect employee civil rights. For example, author proposes a higher standard of consent to ensure employees understand they've chosen the arbitral forum. Author also argues for the employee's right to full remedial awards in arbitration.
{77} SUBJ MATTER: CIVIL RIGHTS
{96} SUBJ MATTER: EMPLOYMENT (NON-UNIONS)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Siegel, David D. "Procedural Issues Continue Apace; Arbitration, "Law of the Case" Doctrine, Certified Questions among Topics Receiving Attention." New York Law Journal; October 2000; 224(64): pp. S3.
This is a review of the procedural cases which found their way to the Court of Appeals during the past year. Issues covered include the following: infancy toll, disclosure, the law of the case doctrine, arbitration, interlocutory appeals, class actions, foreign judgments, long-arm jurisdiction.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Silberberg, Michael C. "Decisions: Discovery in Arbitration, Protective Orders." New York Law Journal; July, 2000; 224(3): pp. 3.
The New York area federal courts issued several discovery decisions in April and May 2000. Among them was a decision upholding an arbitrator's authority to subpoena documents from nonparties prior to a hearing; a spilt over the binding effect of confidentiality stipulations set by a court; a decision reaffirming that a 30(b)(6) deposition notice cedes control over

witness selection to the party being deposed; a decision requiring a pro se plaintiff to depose a corporate defendant's employee where the corporation does business; a decision finding that a debtor had waived Fifth Amendment protection for production of financial records in a civil case by making previous oral and written statements concerning his financial condition.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{132} CONFIDENTIALITY
{133} COURT REFORM

Silverblatt, Gene; Sullivan, Robert. "Arbitration of Landlord-Tenant Disputes at Fort Hood." Army Lawyer; June, 2000; Jun-00: pp. 32.
The author outlines the arbitration services which are available at Fort Hood for resolution of landlord-tenant disputes. The author suggests that attorneys consider the model set by the Fort Hood Deposit Waiver Program, or community dispute resolution procedures to avoid litigation.
{90} SUBJ MATTER: RENTAL HOUSTING

Slate, William K., II. "ADR in a Global Marketplace." Corporate Counsel; January 2001; 8(1): pp. A3.
Article points out that as global business becomes more seamless and the Internet continues to erase boundaries, organizations are signing more contracts abroad and incorporating arbitration clauses to avoid the uncertainty and delay of foreign courts. Furthermore, the author argues that in a global environment where business is conducted "at the speed of thought," arbitration offers enormous benefits as a time-saving alternative to complicated litigation.
{92} SUBJ MATTER: INT'L

Slovak, Thomas S. "ADR: There is More to Arbitration than Just Arbitrating." California Lawyer; May 2000; 20(5): pp. 35.
The Author discusses when it is an appropriate time to use arbitration and how to draft efficient arbitration agreements. Choosing an arbitration organization is an important step in the process.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Smith, Alfred F., Jr.; Farley, Ronald W. "Negotiating and Litigating with the Alabama Department of Environmental Management." The Alabama Lawyer; September 2000; 61(6): pp. 322-330.
This article helps the attorney to decide whether to directly represent a client who is regulated by the Alabama Department of Environmental Management (ADEM) or to refer the matter to an attorney with experience in

environmental law. The Article takes a close look at the ADEM -- its statutory authority, tips for dealing with ADEM, and its administrative procedures.
{38} MED: NON-BINDING RECOMMENDATION PROC—GENERAL PROC—EARLY NEUTRAL EVAL
{84} SUBJ MATTER: ENVIRONMENT
{104} SUBJ MATTER: REGULATORY
{144} LEGISLATION

Smith, Diane R. ""Rough Justice," "Fairness," and the Process of Environmental Mediation." Valparaiso University Law Review; Spring 2000; 34(2): pp. 367-387.
The author discusses how mediation can be effectively utilized in the resolution of environmental disputes. In particular, this article explains how consensus building can offer advantages in an environmental conflict due to the far reaching nature of the conflict itself and the flexibility with which mediation can be employed.
{21} MED: RELATED PROCESSES-GENERAL
{84} SUBJ MATTER: ENVIRONMENT

Smith, William C. "Much to Do about ADR." ABA Journal; June, 2000; 86: pp. 62.
As alternative dispute resolution has grown in popularity, problems with the system are being recognized. In the beginning using ADR was said to be a shorter and cheaper forum to settle disputes. However, as lawyers become more involved in the system, they have made more rules for the ADR processes making them look more like trials. With the lawyer involvement also comes questions of ethics and malpractice.
{21} MED: RELATED PROCESSES-GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{138} ETHICS: GENERAL
{151} ROLE OF LAWYERS

Sordo, Bridget. "Expressions of Interest Sought for Court-Appointed Arbitrators, Evaluators and Mediators." Law Society Journal; August 2000; 38(7): pp. 48-49.
Article describes the nomination process utilized for selecting Supreme Court and District Court Arbitrators' Panels. Author explains the selection criteria and other factors that influence the annual selection of arbitrators. Specifically, the author discusses how appointments are made and the criteria

used for selecting both Supreme Court solicitor evaluators and solicitor mediators.
{74} SUBJ MATTER: GENERAL

Southwick, James D. "Addressing Market Access Barriers in Japan through the WTO: A Survey of Typical Japan Market Access Issues and the Possibility to Address Them through WTO Dispute Resolution Procedures." Law and Policy in International Business; Spring 2000; 31(3): pp. 923-976.
The United States and the European Union have experienced difficulty gaining access to Japan's markets. The article explains that the WTO's dispute resolution mechanism will probably not be able to properly address Japan's trade barriers. This article examines how barriers have affected various sectors of the market. Such issues as distribution, buyer-supplier relationships, cartels among competitors, and Japanese regulations are discussed. Other methods of gaining market access have also been unsuccessful.
{92} SUBJ MATTER: INT'L
{76} SUBJ MATTER: COMMERCIAL

Spencer, David. "Litigation: Court Given Power to Order ADR in Civil Actions." Law Society Journal; October 2000; 38(9): pp. 71.
This article gives an overview of an Act passed by the New South Wales Parliament, which gives the Supreme Court of New South Wales the authority to require parties to participate in mediation or neutral evaluation. The author concludes that the court-annexed ADR can have some benefit, even if the parties do not settle, because it allows them to narrow the issues for litigation.
{92} SUBJ MATTER: INT'L
{21} MED: RELATED PROCESSES-GENERAL
{144} LEGISLATION

Spencer, David. "The Good Faith Element in Alternative Dispute Resolution." Law Society Journal; June, 2000; 38(5): pp. 58-61.
The author provides a summary of recent Australian law relating to agreements to negotiate in good faith. While previously, contract law principles of uncertainty and incompleteness need only have been satisfied, the author states recent caselaw requires that agreements to negotiate in good faith must have a specific core content. Parties may thus agree to negotiate at some future date without waiving their abilities to withdraw from negotiation or mediation.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Spencer, David. "Mandatory Mediation and Neutral Evaluation: A Reality in New South Wales." Australasian Dispute Resolution Journal; November 2000; 11(4): pp. 237-53.
The article addresses the New South Wales' Supreme Court Amendment (Referral of Proceedings) Act. The Amendment provides that mediations referred by the supreme court are mandatory. The author discusses arguments for and against mandatory mediation. The author concludes that, while some criticisms of mandatory mediation are well-founded, mandatory mediation will probably not harm the use of dispute resolution processes in Australia.
{133} COURT REFORM
{127} REQUIREMENTS: MANDATE TO USE
{128} REQUIREMENTS: STATUTORY OR RULES

Steele, Jeanna. "Making a Plan." California Lawyer; August 2000; 20(8): pp. 40.
Matthew Guasco, a former litigation attorney, recounts why and how he left litigation to start his own mediation and arbitration firm. For Guasco, "mediation just clicked." After speaking with successful mediators and reading up on mediation issues, Guasco consulted with his personal accountant, formulated a business plan, and took the plunge. After two challenging years, Guasco now has his dream business and a personal and professional life that just fits.
{21} MED: RELATED PROCESSES-GENERAL

Sterling, Michael L.; Lannetti, David W. "Alternative Dispute Resolution in Virginia Now." VBA News Journal; June, 2000; 26(4): pp. 6-10.
Article provides a general overview of alternative dispute resolution processes, with particular mention of the Virginia legislature's codification of the Virginia Uniform Arbitration Act and other Virginia legislation defining and promoting the use of alternative dispute resolution. The authors outline the advantages of alternative dispute resolution, as well as problems with alternative dispute resolution.
{74} SUBJ MATTER: GENERAL
{144} LEGISLATION

Sternlight, Jean R. "Fighting Arbitration Clause in Franchisor Contracts." Trial; October 2000; 36(10): pp. 65-71.
In light of the disparity between franchisors and franchisees, the Court's eagerness to enforce arbitration clauses between the two, and the insufficiency of the current law to protect franchisees from unjust or unfair

arbitration clauses, there is an increasing need for Congress and state legislators to provide franchises with the legal protections.
{76} SUBJ MATTER: COMMERCIAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{81} SUBJ MATTER: CORPORATE

Sternlight, Jean R. "As Mandatory Binding Arbitration Meets the Class Action, Will the Class Action Survive?." William and Mary Law Review; October 2000; 42(1): pp. 1.
Corporations use contracts of adhesion to compel potential plaintiffs to arbitrate their claims individually. This is done to avoid class action litigation, and although it is unknown whether such strategies will work in the long term, potential defendants are hoping to receive more favorable court rulings by explicitly baring class actions. The Article argues that such insulation from liability is wrong, and steps need to be taken to protect class actions.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{81} SUBJ MATTER: CORPORATE
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Sternlight, Jean R. "Protecting Franchisees from Abusive Arbitration Clauses." Franchise Law Journal; Fall 2000; 20(2): pp. 46.
The Article explains how more powerful franchisors can use arbitration to benefit themselves at the expense of their franchisees by doing what litigation will not allow. Topics covered include the current use of arbitration clauses in franchise agreements, consumer contracts, and employment contracts. Possible methods of attacking mandatory arbitration clauses imposed by franchisors are discussed. It is necessary for legislative reform to help protect franchisees from franchisors' use of mandatory arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{76} SUBJ MATTER: COMMERCIAL

Stewart, Barnaby W.V. "Polishing the Jewel of the Crown: A Timely Review of the WTO Dispute Settlement Understanding." Auckland Universtiy Law Review; Annual 2000; 9(1): pp. 25-46.
The World Trade Organization (WTO), which oversees and integrates international trade law, resolves disputes among its members by means of its "jewel in the crown," or Dispute Settlement Understanding (DSU). Stewart argues that the DSU is essential to the WTO's credibility and integrity. Although WTO members are undecided whether to continue the DSU in its current capacity, alter it or terminate it altogether, Stewart believes the

DSU's role should be maintained with only minor updates and improvements.
{92} SUBJ MATTER: INT'L
{87} SUBJ MATTER: GOV'T

Stewart, Terence P.; Karpel, Amy Ann. "Review of the Dispute Settlement Understanding: Operation of Panels." Law and Policy in International Business; Spring 2000; 31(3): pp. 593-655.
This article describes the beginning of the current WTO dispute settlement system. Authors contrast the WTO system with the system implemented under the GATT. Authors suggest several improvements such as making the system more transparent to the public. Authors recommend the attendance of private parties at panel discussions and making transcripts of panel proceedings matters of public record.
{92} SUBJ MATTER: INT'L
{125} COMPARISONS: HISTORICAL

Stone, Marcus. "Representing Clients in Mediation: An Essential New Professional Skill." Journal of the Law Society of Scotland; August 2000; 45(8): pp. 32.
Marcus Stone concludes his two-part series with a discussion of the new role mediation creates for lawyers and the new professional skills it requires. Outlining the differences between more traditional forensic advocacy and more modern "mediation advocacy," Stone tells beginning mediators what skills will be needed of them and offers other helpful how-to advice.
{21} MED: RELATED PROCESSES-GENERAL
{151} ROLE OF LAWYERS

Stone, Marcus. "Representing Clients in Mediation; An Essential New Professional Skill." Journal of the Law Sociey of Scotland; July, 2000; 45(7): pp. 34-35.
Although the United States has long recognized the benefits of mediation, Scotland has just recently been introduced to its practice. Although Scottish solicitors recognize the benefits of mediation, its practice is not yet fully developed because of a lack of familiarity with its use. Also, some solicitors may see mediation as a threat to their litigation income. Yet, the author notes that solicitors must not deny their client the opportunity to use mediation based on its proven value around the world and studies indicating that their is a 90% success rate when using mediation.
{92} SUBJ MATTER: INT'L

Stratton, Sheryl. "Open to Improving Arbitration Program, IRS Looks for Feedback." Tax Notes; April, 2000; 87(2): pp. 188-190.
The IRS conducted hearings to explore broadening the use of arbitration for issues in the appeals process. Currently arbitration is used to resolve only factual issues, and many mandatory disqualifiers make arbitration unattractive. Topics covered include allowing arbitration of substantive issues, appealability, use of multiple arbitrators, and confidentiality of the proceeding.
{108} SUBJ MATTER: TAX

Sullivan, Martin A. "How to Decode APAs and Still Keep a Secret." Tax Notes; September 2000; 88(11): pp. 1294-1302.
Article discusses how Congress overreacted when it enacted legislation in 1999 that limits the information that the IRS may disclose concerning advance pricing agreements. Public information, the author argues, is necessary for the development of transfer pricing law. After discussing the privacy and disclosure interests of various types of information included in an APA, the author concludes that the new pre-filing agreement program, the domestic equivalent of the APA program, may face the same overreaction from Congress.
{92} SUBJ MATTER: INT'L
{108} SUBJ MATTER: TAX
{132} CONFIDENTIALITY

Swacker, Frank W.; Redden, Kenneth R.; Wenger, Larry B. "WTO & ADR." Dispute Resolution Journal; August 2000; 55(3): pp. 35-38, 81-87.
This article provides an overview of private international commercial alternative dispute resolution (ADR) and discusses aspects of public international commercial ADR employed under the Dispute Settlement Understanding (DSU) of the World Trade Organization (WTO). The DSU provides for the use of dispute resolution methods to address conflicts between sovereign states.
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Tanick, Marshall H. ""Public Policy" in Arbitration Awards." The Hennepine Lawyer; April, 2000; 69(4): pp. 4-9.
Article addresses the drawbacks of using arbitration including the difficulty in appealing adverse arbitration awards because the Uniform Arbitration Act and the Federal Arbitration Act only have very limited grounds for appeal. The article addresses the public policy grounds that courts recognize as a

basis of appeal of arbitration awards. The article discusses how Minnesota state and federal courts deal with the public policy bases for appeal of arbitration awards.
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Tateishi, Takao. "Recent Japanese Case Law in Relation to International Arbitration." Journal of International Arbitration; August 2000; 17(4): pp. 63-75.
Article concerns the enforcement of a foreign arbitration award in Japan. The author discusses the manner in which Japanese courts view the governing law of the arbitration agreement and the application of the New York Convention. This article also reviews two Japanese domestic court decisions that may have an impact on how foreign arbitration awards are enforced.
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Taylor, David K. "Avoiding Unnecessary Punches: Skillful Crafting of Alternative Dispute Resolution Contract Clauses." Tennessee Bar Journal; April, 2000; 36(4): pp. 20-29.
The author suggests ways to draft and negotiate mediation and arbitration clauses in contracts to ensure that dispute resolution is effective and painless.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Tebo, Margaret Graham. "Which Way for the ADA?." ABA Journal; December 2000; 86(December): pp. 54.
This article notes that there are a number of current proposals to change the ADA. The author mentions that while one current bill would require mediation before the filing of an ADA lawsuit, another bill opposes mandatory arbitration. The author mainly focuses on the proposed ADA Notification Act that would require an individual to provide a business with written notification of the particular ADA violation and wait ninety days before filing a lawsuit against the business. The author addresses prespectives of those who support and oppose the proposal. Additionally, the author touches on *University of Alabama v. Garrett*, an ADA case before the U.S. Supreme Court this term. In Garrett, the Court will determine whether the ADA applies to state governments.
{77} SUBJ MATTER: CIVIL RIGHTS
{21} MED: RELATED PROCESSES-GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Tebo, Margaret Graham. "Standing Up for Victims: Commission Bolsters Efforts to Reduce Domestic Violence." ABA Journal; October 2000; 86: pp. 94.
The ABA Commission on Domestic Violence educates the bench, bar, and public about domestic violence. The House of Delegates passed two resolutions that the ABA Commission sponsored. The first resolution endorses legislation requiring courts to consider safety risks when drafting visitation orders, and encourages courts to take steps to provide safe visitation. The second addresses courts that require mediation in divorce actions, encouraging them to let domestic violence victims opt out.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Thensted, Charles F. "Roundtable Discussion: Mediation." Louisiana Bar Journal; October 2000; 48(3): pp. 202.
There is a brief discussion on mediation in Louisiana, explaining that most mediation work in the state is found in personal injury cases. The Louisiana Mediation Act was not passed until 1997, before which time there were no restrictions on who could act as a mediator. It discusses the virtues of allowing non-lawyers to act as mediators in simple disputes. Panel members discuss the attributes an effective mediator must have, as well as techniques they have found effective.
{21} MED: RELATED PROCESSES-GENERAL
{125} COMPARISONS: HISTORICAL
{144} LEGISLATION

Thoennes, Nancy. "Dependency Mediation: Help for Families and Courts." Juvenile & Family Court Journal; Spring 2000; 51(2): pp. 13-22.
This article evaluates dependency mediation in Colorado's Fourth Judicial District. "This article explains dependency mediation; compares mediated and non-mediated settlements; describes participant reactions to the process and documents whether mediation produces savings through cost avoidance." Data was collected from professionals who participated, from mediators, and from court records. Results show approval by professionals involved due to cost savings, and high settlement rates in a wide range of cases.
{21} MED: RELATED PROCESSES-GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Thoennes, Nancy. "Dependency Mediation in Colorado's Fourth Judicial District." Colorado Lawyer; February 2001; 30(2): pp. 41.
Article discusses the role that dependency mediation can and does play in Colorado's Fourth Judicial District. The author first defines dependency

mediation itself, then discusses why dependency mediation can play an invaluable role in the adjudication of legal disputes in California.
{21} MED: RELATED PROCESSES-GENERAL

Thorn, Craig; Carlson, Marinn. "The Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade." Law an Policy in International Business; Spring 2000; 31(3): pp. 841.
This article examines the relationship between the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement). The author concludes that the two are in many ways related, with similar provisions and coverage. However, the author points out fundamental differences between the two as well.
{92} SUBJ MATTER: INT'L

Timmins, Michael. "In Search of Good Faith." Auckland Universtiy Law Review; Annual 2000; 9(1): pp. 300-306.
Timmons compares New Zealand's Employment Relations Act 2000 (ERA) with its predecessor, the Employment Contracts Act 1991(ECA). Timmons focuses on two specific changes in the ERA from the ECA. The ERA departs from the ECA's conceptions of industrial relations as mere contract by introducing a standard of good faith bargaining. The ERA also introduces a procedural change that implements a new Employment Authority instead of the former Employment Tribunal.
{93} SUBJ MATTER: LABOR—GENERAL

Toikka, Richard S. "Patent Licensing Under Competitive and Non-Competitive Conditions." Journal of the Patent and Trademark Office Society; April, 2000; 82(4): pp. 279-295.
The article considers the determination of licensing royalties in both competitive and non-competitive markets. The article also discusses the limitations of the twenty-five percent reasonable royalty rule and explains the "analytical approach" to reasonable royalties.
{76} SUBJ MATTER: COMMERCIAL

Touval, Saadia. "Does the High Commissioner Mediate?." New York University Journal of International Law and Politics; Spring 2000; 32(3): pp. 707-713.
The commentary's stated focus is whether the High Commissioner on National Minorities of the OSCE is a mediator. The author looks at

mediation from a Realist approach to international relations and considers mediation to be the seeking of an agreed settlement. Although the High Commissioner is working on disputes between governments and minority groups the High Commissioner may have Realist political motives. The issue of compromise and negotiations on questions relating to international norms is also mentioned.
{92} SUBJ MATTER: INT'L
{21} MED: RELATED PROCESSES-GENERAL

Truesdale, John C. "Battling Case Backlogs at the NLRB: the Continuing Problem of Delays in Decision-Making and the Clinton Board's Response." The Labor Lawyer; Summer 2000; 16(1): pp. 1-18.
The backog of cases at the National Labor Relations Board was serious in the Reagan years, but became even greater in the Clinton administration. The author cites internal causes of delay as follows: leadership and performance, priority concerns, and failure of members to reach consenus. External causes of delay include Board member turnover and vacancies, and Congressional hostility and budget cuts. The external causes are the more serious in the author's estimation. Board procedural responses are detailed in the article, including the use of settlement judges to speed up resolutions and bench decisions.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{87} SUBJ MATTER: GOV'T
{146} ORGANIZATION POLICIES AND RULES

Tuchmann, Eric. "Arbitration Takes Center Stage Before Supreme Court." Corporate Counsel; October 2000; 7(10): pp. A4.
The Supreme Court will decide three arbitration agreement enforcement cases this fall, and Tuchmann summarizes the arbitration law that will be decided. Specifically, whether the Federal Arbitration Act applies to employment contracts, if a party may appeal a court order compelling arbitration when other issues are before the court, when a company can require customers to arbitrate, and when courts can vacate an arbitrator's award on public policy grounds.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Tukel, Daniel B. "To Arbitrate or Not to Arbitrate Discrimination Claims: That Is Now the Question for Michigan Employers." Michigan Bar Journal; September 2000; 79(9): pp. 1206.
Analysis of a recent Michigan case upholding the validity of pre-dispute mandatory mediation agreements. For the agreement to be valid it must be

valid contract, must not waive any substantive rights of the employee, and the procedure used must be a fair.
{93} SUBJ MATTER: LABOR—GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES

Van Ausdall, Erika. "Confirmation of Arbitral Awards: The Confusion Surrounding Sec. 9 of the Federal Arbitration Act." Drake Law Review; October 2000; 49(1): pp. 41-70.
Discussion of what is necessary to get court enforcement of an arbitration award under § 9 of the FAA's "consent to judgment provision." Debate focuses upon whether an explicit consent to judgment entry is necessary, or whether mere evidence that the arbitral award is to be final and binding is enough. Analyzes how different courts have dealt with this issue, various forms of statutory interpretation, and concludes that explicit consent is not required.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Van Loon, Paul L. "Thinking ooutside the box in mediation bifurcate . . . then mediate!." Corporate Counsel; November 2000; 7(11): pp. A4.
Loon discusses the increased use of mediation as a means to resolving disputes. However, the main focus of the article is an examination of a new, non-traditional approach to mediation. This new approach centers around bifurcating the dispute into two phases. The first phase involves an arbitration or litigation of the dispute to determine liability. Then, the second phases is the use of mediation to assess damages. The author notes that this strategy has the affect of allowing the parties to try the matter and determine liability without either party having to admit blame. Once this is accomplished the parties can then go into mediation and determine the appropriate damages.
{21} MED: RELATED PROCESSES-GENERAL

Ver Ploeg, Christine D. "Pay Equity in Interest Arbitration." William Mitchell Law Review; December 2000; 27(2): pp. 811-839.
When the Minnesota Legislature passed the Local Government Pay Equity Act in 1984, it became a pioneer in requiring that the state and other governmental bodies must provide equal pay for jobs of equal worth. As a result, interest arbitration, a process whereby a neutral outside party unilaterally determines the terms and conditions of a collective bargaining agreement, underwent turmoil in the 1980s as parties and arbitrators tried to reconcile pay equity with outside market forces. Cases from the 1990s

demonstrate a shift to giving pay equity considerations and internal comparison more weight.
{87} SUBJ MATTER: GOV'T
{144} LEGISLATION
{93} SUBJ MATTER: LABOR—GENERAL

Vilaplana, Aitana Mendez; Elpon, Carlota Solanes. "Mediation as an Alternative Dispute Resolution in Spain." For the Defense; July, 2000; 42(7): pp. 56-57.
The use of mediation as an alternative to traditional litigation is slow to come to Spain. Although the spirit of mediation has been in the Spanish legal system since the end of the 19th century under the Civil Code, the application and use of mediation is still rare. However, there has been a recent proliferation of citizen motivated initiatives such as the Catalan Association for the Development of Arbitration and Mediation (ACDMA) and the Peace and Ceasefire Centre that are taking steps to encourage the use of alternative dispute resolution in Spain. The author notes that it is the responsibility of the Spanish society to use ADR and create a constructive attitude in the resolution of disputes.
{92} SUBJ MATTER: INT'L

Wald, Arnoldo; Schellenberg, Patrick; Rosenn, Keith S. "Some Controversial Aspects of the New Brazilian Arbitration Law." University of Miami Inter-American Law Review; Spring-Summer 2000; 31(2): pp. 223-252.
This article discusses the new arbitration law in Brazil adopted in 1996. Issues regarding constitutionality, interpretation, and application are covered.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{92} SUBJ MATTER: INT'L

Walker, Janet. "Information Meetings Revisited." Family Law; May, 2000; 30(5): pp. 330-334.
Article discusses the United Kingdom's Family Law Act of 1996. Debate over Part II of the act, which requires that couples seeking divorces attend information meetings designed to inform them of the personal and societal costs of divorce, is treated at length. Article concludes that while the meetings are not to influence the parties' decisions and should only provide information, the mediator must be allowed some latitude in personalizing the material to the parties for it to be worthwhile.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Wallach, Lori. "Transparency in WTO Dispute Resolution." Law and Policy in International Business; Spring 2000; 31(3): pp. 773.
John Ragosta's analysis of the World Trade Organization dispute resolution system provides useful recommendations for reform that may ultimately save the WTO from itself. His reform proposal may not go far enough, however, to restore the waning legitimacy, weak enforcement mechanisms, and political perplexities that beleaguer this international organization. Procedural changes are only skin-deep; the WTO needs substantive revision as well.
{92} SUBJ MATTER: INT'L

Walther, Gretchen M. "Power Imbalances in Divorce Mediation." American Journal of Family Law; Summer 2000; 14(2): pp. 93-101.
Family law mediation is on the increase. However, unequal bargaining power between the parties in divorce mediation may affect the fairness of the agreement. This article asks whether the principles of mediator neutrality and party empowerment prevent the intervention that could protect a weaker party from unfair outcomes. It also addresses whether mediators have the training to solve power balancing issues.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{147} POWER IMBALANCE

Wannamaker, Lisa; Gunnell, E. Gail. "Negotiating and Drafting International Software License Agreements (with Model Agreement)." The Practical Lawyer; June, 2000; 46(4): pp. 45-58.
Article addresses the differences which may exist between national and international laws relative to software license agreements. The authors note that when negotiating international software license agreements, parties should be aware of differences in intellectual property law, understandings for payment, and other pertinent laws (such as warranties). The authors provide a model international software license agreement.
{1} W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Waters, Julie L. "Does the Battle over Mandatory Arbitration Jeopardize the EEOC's War in Fighting Workplace Discrimination?." Saint Louis University Law Journal; Summer 2000; 44(3): pp. 1155-1191.
This Comment addresses the issue of whether the EEOC should have the right to bring a claim on behalf of an employee who has an agreement to arbitrate all employment disputes. The focus is on whether the EEOC should be able to pursue monetary damages on behalf of such employees. Policy issues and the differing views of the Courts of Appeals are examined. A

proposal concerning injunctive relief and monetary relief is made in light of current federal arbitration policy.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{77} SUBJ MATTER: CIVIL RIGHTS
{94} SUBJ MATTER: LABOR—DISCRIMINATION

Webber, Gary. "Mediate!." Solicitors Journal; July, 2000; 144(27): pp. 654.
Although alternative dispute resolution is seen as trendy and people are not convinced it works, the system does work when the following three conditions are met: (1) the parties at the meeting have the authority to settle; (2) the parties genuinely intend to settle; and (3) the representative must prepare the case as an advocate would prior to trial.
{121} SETTLEMENT: AUTHORITY
{136} ECONOMIC ADVANTAGES OF ADR

Weeks, Janet. "A Farewell to Arms: A Litigator Finds His Life Torn Apart and Refashions Himself as a Mediator." California Lawyer; May 2000; 20(5): pp. 48.
The Author discusses the trials and tribulations of Michael McCabe's life as an attorney and his new role as a mediator. The Author goes into detail about how McCabe's role as a mediator has been influenced by the twists and turns of his life.
{21} MED: RELATED PROCESSES-GENERAL

Werner, Jacques. "When Arbitration Becomes War: Some Reflections on the Frailty of the Arbitral Process in Cases Involving Authoritarian States." Journal of International Arbitration; August 2000; 17(4): pp. 97-103.
Author relates cases of pressure applied by authoritarian governments that impact the integrity of the arbitration process. The article focuses mainly on the Indonesian cases that concerned an authoritarian state preventing its arbitrator from attending an arbitration tribunal to which that state was a party. The author also gives two examples concerning the integrity of the process that are composites of real-life situations.
{92} SUBJ MATTER: INT'L

Wethington, Olin L. "Commentary on the Consultation Mechanism under the WTO Dispute Settlement Understanding During Its First Five Years." Law and Policy in International Business; Spring 2000; 31(3): pp. 583-590.
This article analyzes the consultation phase of the WTO's dispute settlement process. The phase, now five years in existence, has been touted as highly successful. Author does not think the results of the process are terribly

significant. Data suggests that the consultation process has facilitated the settlement of only 4.7% of the disputes brought to the WTO. Further data suggest that the success rate of the consultation phase is falling. Author proposes shortening the time frame for consultation thereby facilitating, rather than delaying, resolution.
{92} SUBJ MATTER: INT'L

Wetsch, Sherry R. "Alternative Dispute Resolution: An Introduction for Legal Assistance Attorneys." Army Lawyer; June, 2000; Jun-00: pp. 8-16.
The author provides a general introduction to mediation and alternative dispute resolution processes. Definitions of mediation and negotiation are provided, and the author notes agreements to mediate, as well as arbitration provisions, to which clients may be subject. The author suggests that legal assistance attorneys may benefit from actively seeking alternative dispute resolution procedures for their clients, particularly in family disputes.
{21} MED: RELATED PROCESSES-GENERAL

White, Richard. "Family Practice." New Law Journal; March, 2000; 150(6927): pp. 388.
The Lord Chancellor will not increase remuneration rates for family law practitioners, despite their vastly increasing overheads. This lack of remuneration will lead to a lower standard of family work, as the best practitioners seek higher pay and more respect. Mandatory mediation is a prerequisite for legal aid certificates in many family law matters, a requirement that will no doubt be complicated as the number of legal aid solicitors diminishes.
{85}• SUBJ MATTER: FAMILY (DOMESTIC REL.)

Wieczorek, Dennis E.; Feirman, Steven B.; Sims, James R., III. "Arbitration Train Runs out of Track." Franchise Law Journal; Fall 2000; 20(2): pp. 84.
The authors present recent decisions in which courts have refused to compel arbitration. The cases presented construe arbitration clauses narrowly. The article focuses on arbitration in the franchise relationship. Some of the cases discussed deal with choice of forum, vicarious liability, fraud, and encroachment. The Article also explores current arbitration cases involving contract, antitrust, transfer, termination, and other franchise issues.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{76} SUBJ MATTER: COMMERCIAL

Wilkinson, John. "Streamlining Arbitration of the Complex Case." Dispute Resolution Journal; August 2000; 55(3): pp. 13-Aug.
Article discusses the importance of arbitrating complex commercial disputes effectively and expeditiously. The author notes that it is imperative that complex disputes are managed effectively from the outset of the arbitration process. The author suggests some specific approaches that can be employed to shorten the arbitration process while maintaining a sense of fairness in the process among the parties.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Willis, Michelle. "The Use of Deception in Negotiations: Is it "Strategic Misrepresentation" or Is It a Lie?." Australasian Dispute Resolution Journal; November 2000; 11(4): pp. 220-27.
The article focuses on the ethical issues accompanying the use of decit as a negotiation tactic in business negotiations. The author attempts to define "lying" in the negotiation context and discusses the popularity of one form of negotiation deceit, "holding prime values hostage," as well as addressing what motivating factors exist to encourage the negotiating parties to lie. The author states that honesty promotes reliability in negotiations.
{139} ETHICS: MISREPRESENTATION, FAILURE TO DISCLOSE
{138} ETHICS: GENERAL

Wilson, Barbara. "Mediation and Morality." Family Law; November 2000; 30: pp. 853-855.
Many clients of mediation proceedings claim that their situation is unfair. These same clients see the unfairness as a moral issue. Mediators can respect and address their clients' sense of morality and not impose their beliefs on the situation. A mediator needs to be the first person to explain that what the client believes is fair may not be relevant in the legal system.
{21} MED: RELATED PROCESSES-GENERAL
{92} SUBJ MATTER: INT'L
{138} ETHICS: GENERAL

Wilson, Bruce S. "Can the WTO Dispute Settlement Body be a Judicial Tribunal Rather than a Diplomatic Club?." Law and Policy in International Business; Spring 2000; 31(3): pp. 779.
Private parties have limited access to World Trade Organization dispute settlement proceedings by design. Proposed changes to the process would increase private party access by improving transparency, including amicus briefs, promoting participation of private counsel, and improving procedures and drafting of WTO opinions. However, all of these changes will still be

checked by governments, including the U.S. government, who are reluctant to create a truly independent judiciary.
{92} SUBJ MATTER: INT'L

Winograd, Michael S. "Rules of Evidence in Labor Disputes." Dispute Resolution Journal; May, 2000; 55(2): pp. 45-54.
The costs and benefits of applying the formal rules of evidence to labor arbitration are examined in the context of practical examples. Winograd argues that the goals and nature of labor arbitration make the use of the evidentiary rules inappropriate, and a detriment to dispute resolution. He concludes that labor arbitration needs to remain independent of the formal legal system in order to preserve its unique qualities and comparative advantages over traditional litigation.
{93} SUBJ MATTER: LABOR—GENERAL

Woska, A. Daniel. "Arbitration Clauses Added to Consumer Contracts; Why They are not Enforceable." GP Solo & Small Firm Lawyer; October 2000; 17(7): pp. 40-43.
Discusses the case of *Badie v. Bank of America* and the issue of arbitration clauses contained in consumer contracts. The argument made was that the consumers did not agree to arbitrate disputes in the original agreement, and the Bank could not add such a clause by sending a statement in the mail stating so. The court held that since the ADR agreement was not in the original contract, it could not be added later through adhesion contract terms.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Wright, Carolyn. "IRS Bond Negotiation Approach: Understandable but Overstated?." Tax Notes; July, 2000; 88(3): pp. 327-328.
The director of the IRS's tax exempt bond program stated that bond issuers have to decide whether to settle disputes with the Service by requiring an agreement or appealing disputes to the IRS appeals office. Bond counsel is unnerved at the possible suggestion that settlement talks may not be restarted once they are broken off. Since this is not the case, one lawyer recommends the Service make clear that issuers do not have to concern themselves with their appeal rights. These rights are preserved by a 1998 statute.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

Yoshida, Ikko. "Comparison of Awarding Interest on Damages in Scotland, England, Japan and Russia." Journal of International Arbitration; April, 2000; 17(2): pp. 41-72.

This article centers on a study of how four different jurisdictions perceive and define interest awards on damages by an arbitrator when there has been a breach of contract. Applying a Model Clause the study compares and contrasts the Scottish, English, Japanese, and Russian laws in terms of interest and damages, and awarding interest on damages. The article also offers suggestions for translation of various terms within the different jurisdictions.
{92} SUBJ MATTER: INT'L

Young, Michael D. "Know a Mediator's Ethical Obligations." New York Law Journal; August, 2000; 224(35): pp. S6.
Although attorneys representing clients in mediations can readily ascertain the qualifications of the mediators and the procedures to be utilized, they will likely find it more difficult to learn what ethics rules or guidelines, if any, govern the conduct of the mediators. More specifically, the article attempts to identify the ethical guidelines that do or could govern the conduct of mediators practicing in New York and the types of issues covered by these standards.
{138} ETHICS: GENERAL

Younger, Stephen P. "New York Moving Forward To Put ADR Into Mainstream." New York Law Journal; May, 2000; 223(103): pp. 9.
New York is at a crossroads in the evolution of ADR. Despite many innovative ADR programs, like Community Dispute Resolution Centers and Corporate ADR Services, there are currently numerous plans being proposed. Younger suggests more education, ADR neutrals centralized standards, statutory protections of centralized confidentiality and expanded court-annexed ADR. Younger commends the State Bar and the Unified Court system for their efforts.
{74} SUBJ MATTER: GENERAL
{133} COURT REFORM

Zaffiro, Richard L. "First, Let's Kill All the Trials!." For the Defense; July, 2000; 42(7): pp. 52-55.
This article looks at the use of ADR in the state of Wisconsin where ADR has been required by statute since 1993. The author conducted several interviews with area attorneys, judges, and mediators who explained the effect of ADR on the practice of law. As a group, they agreed that ADR has made lawsuits settle more quickly. The number of civil trial has been dropping, negotiations are now done in a much more formal setting, and

settlements are now taking place in a mediator's office rather than on the doorstep of the courthouse on the eve of trial.
{74} SUBJ MATTER: GENERAL

Zekos, Georgios I. "*Eco Swiss China Time Ltd v. Benetton International NV*: Courts' Involvement in Arbitration." Journal of International Arbitration; April, 2000; 17(2): pp. 91-94.
This article examines a Dutch Supreme Court decision analyzing the circumstances under which an arbitration award may be found contrary to public policy, and thus capable of being annulled. Particular attention is drawn to the perks of arbitration, as well as criticisms of the process. Expressing that the absence of an appeals process conducted by an arbitral tribunal is seen as one of the most serious disadvantages of arbitration proceedings, this article offers an innovative solution.
{92} SUBJ MATTER: INT'L
{102} SUBJ MATTER: PUBLIC POLICY
{136} ECONOMIC ADVANTAGES OF ADR

Zumbo, Frank. "Scenarios for Mediating Franchise Disputes." (Australia) Law Society Journal; December 2000; 38(11): pp. 68-69.
This article has been ordered but is not yet available. Upon arrival it will be delivered to the JDR mailbox.

Zumbo, Frank. "New Voluntary Code for Resolving Retail Grocery Industry Disputes." Law Society Journal; November 2000; 38(10): pp. 33.
The author addresses the "retail grocery industry ombudsmen scheme" adopted in the New South Wales Retail Grocery Industry Code of Conduct. The Code provides that disputes are to be resolved internally and, failing that, referred to an industry ombudsman. The author outlines the requirements of the two stages and summarizes the benefits of the provision.
{145} OMBUDSPERSON
{128} REQUIREMENTS: STATUTORY OR RULES

"Developments in the Law - the Paths of Civil Litigation." Harvard Law Review; May 2000; 113(7): pp. 1752-1875.
The Author explains how litigation has many paths today. The article examines the new procedural and substantive techniques available now. The Author uses the handgun industry to illustrate the changing law and discusses the use of punitive damages.
{125} COMPARISONS: HISTORICAL

"U.S. Supreme Court Arbitration -- Appealability." New Jersey Law Journal; December 2000; 162(13): pp. 58.
In *Green Tree Financial Corp. v. Randolph*, the United States Supreme Court held that where the District Court has ordered the parties to proceed to arbitration, and dismissed all the claims before it, the decision is final under the Federal Arbitration Act (FAA), and therefore appealable. Because the FAA does not define "a final decision with respect to an arbitration," the Court accords the term its well established meaning: It is a decision that ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment.
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

"Who Can Appear?." New Jersey Law Journal; December 2000; 162(13): pp. 22.
Clearer guidelines are needed with respect to whether, in the context of alternative dispute resolution proceedings, the parties' representatives must be lawyers admitted in the jurisdiction where the event is taking place.
{114} 3D PARTY: PRACTICE OF LAW
{138} ETHICS: GENERAL

"Unintended Consequences." New Jersey Law Journal; July, 2000; 161(1): pp. 22.
New Jersey established a district fee arbitration system in 1978 as a means of resolving disputes over attorney fees with greater efficiency and less cost. While the process typically satisfies attorneys as well as clients, a problem exists becasue the vast majority of disputes in the system involve matrimonial cases. These legally unsophisticated clients do not know market rates and consequently are shocked by their total bill. It may be necessary for judges to get involved early in the litigation process to prevent later disputes over attorney fees in matrimonial cases.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

"*Catalyst Employees' Association v. Air Products and Chemicals, Inc.*" New Jersey Law Journal; September 2000; 161(12): pp. 76.
This reprinted United States District Court opinion for the District of New Jersey concerns arbitration and attorneys' fees in labor law. The plaintiff, a labor union, sought enforcement of an arbitration award, which the defendant-employer refuses to fully recognize, claiming the arbitrator exceeded his authority in his award of damages. Justice Irenas discussed the limited role of the court in reviewing an arbitration decision, how an arbitrator's authority to award certain remedies is properly limited, and when

attorneys' fees is available against a party that challenges an arbitration award unreasonably. It held that the arbitration award was proper for all damages, and that the plaintiffs deserved attorneys' fees for their enforcement action.
{95} SUBJ MATTER: LABOR—MANAGEMENT (UNIONS)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

"Arbitration in the 21st Century." New Jersey Law Journal; September 2000; 161(12): pp. 22.
This short editorial outlines some of the major revisions to the 1955 Uniform Arbitration Act (UAA) included in the Revised Uniform Arbitration Act (RUAA). Several of these revisions include clarifying which issues of arbitrability are for the courts, and which are for the arbitrator, prescribing when a party may seek preliminary relief from a court, and providing new rules concerning the involvement of an arbitrator in post-arbitration proceedings. The editorial also points out that the revisions purposely do not address the heated issue of whether a court may vacate an award that violates public policy or seem to disregard the law.
{144} LEGISLATION

"Public Bidding -- Arbitration -- Performance Bonds -- Sureties." New Jersey Law Journal; August 2000; 161(8): pp. 80.
Digest report of appellate case *Gloucester City Board of Education v. American Arbitration Association.* The case involves a defendant-surety who provided a performance bond for a subcontractor so that it could work with a contractor. The court held that the defendant- surety could be required to arbitrate disputes that the subcontractor had with the contractor, pursuant to the arbitration agreement between the subcontractor and the contractor. However, the defendant-surety is not bound by the arbitration agreement when the dispute is between the surety and the subcontractor and involves the terms of the performance bond.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{80} SUBJ MATTER: CONSTRUCTION

"Education-Arbitration." New Jersey Law Journal; October 2000; 162(2): pp. 64.
In *Board of Education of Township of Jackson v. Jackson Education Association,* the court affirmed an order denying a permanent restraint against defendant from proceeding with arbitration before the Public Employment Relations Commission because arbitration was the last step in an established grievance procedure. Furthermore, the nonrenewal of an

independent contract for a teacher's extracurricular assignment, was an issue within the scope of the grievance procedure.
{44} ARB: MANDATORY, COURT-ANNEXED—GENERAL

"*Kimm v. Jin Cha et al.*, A-4368-99T2." New Jersey Law Journal; December 2000; 10(1): pp. .
This article recaps the Appellate Divison of New Jersey decision in *Kimm v. Jin Cha.* The court concluded that fee arbitration rules must be applied similarly to both sides of a dispute. Because the plaintiff provided adequate notice to his former clients of their option to arbitrate his fee and the consequence of waiver if more than thirty days expired from receipt of the letter, the court held that arbitration should be dismissed. Instead, the court decided that the litigation regarding the attorney's fees should go forward.

"*Eastern Associated Coal Corp. v. United Mine Workers of America*, District 17, No. 99-1038." New Jersey Law Journal; December 2000; 10(1): pp. .
This article recaps the November 2000, U.S. Supreme Court decision of *Eastern Associated Coal Corp. v. United Mine Workers of America.* The Court held that public policy considerations would not force a court to refuse to enforce an arbitration award because it ordered an employer to allow an employee to return to his truck driving job after twice testing positive for marijuana. The arbitrator decided that the employer falied to prove that it had "just cause" to fire its employee as required under the corporation's collective bargaining agreement. Thus, the arbitrator ruled that the employee should be reinstated pursuant to conditions such as completion of a substance abuse program. The Court reasoned that the question was whether the reinstatement agreement violated public policy, not whether the employee's drug use violated public policy. The Court concluded that the agreement did not fit within the narrowly drawn public policy exception.
{93} SUBJ MATTER: LABOR—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

"Names Released After Secret Mediation." News, Media & the Law; Spring 2000; 24(2): pp. 30.
In an administrative proceeding, comments were made by members of the public about a wildlife plan. The agency appealed the judge's order regarding the plan, but the issues were resolved through mediation. This short article points up the notion that public comment will not gain confidential status through mediation where the public interest in knowing what influenced the public agency outweighs the privacy concerns of those making comments.
{132} CONFIDENTIALITY